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## LAW OF THE LAND

SEPARATE WAYS

# A Tale of Two Turnpike Air Rights Developments

As Parcel 12 Rises, 1000 Boylston Descends into Legal Battle

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SPECIAL TO BANKER & TRADESMAN



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**B**oston is an attractive city with many desirable attributes, but it remains scarred by the 20th century public transportation project known as the Massachusetts Turnpike, an urban canyon that separates the Back Bay and South End.

Decades ago, turnpike air rights developments for the Hynes Convention Center, Prudential Center, John Hancock garage and Copley Place bridged some of this gap, but no similar projects have been completed since the 1980s. This is not surprising, given the engineering, permitting and financial challenges involved when constructing buildings over an eight-lane interstate highway and adjacent railroad tracks.

The city of Boston and the then-Massachusetts Turnpike Authority tried to facilitate air rights developments in 1997 with a memorandum of understanding that gave the city a role in approving those projects. The city published “A Civic Vision for Turn-

pike Air Rights in Boston,” which offered project guidelines on 23 air rights parcels delineated by the Turnpike Authority, but the 2008 financial crisis and subsequent Great Recession stalled development.

In 2018, Weiner Ventures placed a major project on the drawing board involving parcel 15, an 11,000-square-foot air rights parcel near the Hynes Convention Center. The Weiner project would have combined parcel 15 with adjacent properties for a mixed-use project holding 108 condominium units, a 175-space parking garage and a 45,500 square-foot retail component. To satisfy Boston’s inclusionary development policy, the Weiner project would have created at least 51,000 square feet of affordable housing at locations to be negotiated with the Boston Planning & Development Agency.

### Teaming Up with Suffolk Construction

Weiner formed a joint venture with an entity controlled by John Fish, the president of Suffolk Construction Co., to develop parcel 15. Suffolk was engaged as general contractor. State and local government did their part to support the Weiner project. The BPDA successfully petitioned the Boston Zoning Commission to establish parcel 15 as a planned development area, and the



At a topping-off ceremony in September, Samuels & Assoc. marked the completion of vertical framing for an office and life science tower anchored by CarGurus’ headquarters on Massachusetts Turnpike air rights parcel 12. Photo courtesy of Samuels & Assoc.

state legislature passed a law specifically authorizing the Massachusetts Department of Transportation to double the maximum air rights lease term for parcel 15 from 99 years to 198 years.

*Continued on Page 2*

By summer 2018, most of the permitting for the Weiner project was in place or forthcoming, leaving Weiner to negotiate financing. Suffolk mobilized a construction team to start site work. But the deal abruptly fell apart in 2019, after Weiner and Fish had already invested over \$80 million in project costs. Weiner's principal, Stephen Weiner, became uncomfortable with project risks. He refused to sign a personal guaranty for the project, and was reluctant to pledge liquid collateral to secure a limited recourse guaranty.

In August 2019, Weiner announced that the parcel 15 project would not proceed. Fish scrambled to find substitute investors for Weiner and structure a financial arrangement that would enable Weiner and him to recover their investments, but without success. MassDOT terminated the development agreement for parcel 15 in October 2019.

Fish filed suit in Superior Court against Weiner for breach of contract, intentional misrepresentation, tortious interference and unfair and deceptive business practices. Weiner answered with the expected denials, affirmative defenses and counter-

claims. Discovery by the parties is ongoing and is expected to be completed next year. A once-promising collaboration between Weiner and Fish has degenerated into nasty litigation.

### **CarGurus HQ and Hotel Rise on Boylston Street**

Meanwhile, a few hundred feet down Boylston Street to the west of parcel 15, there is good news to report. Samuels & Assoc. is making steady progress develop-

**A once promising collaboration between Weiner and Fish has degenerated into nasty litigation.**

ing the 1.8-acre Mass Pike air rights plot known as parcel 12. In 2020, Samuels signed a 99-year lease for parcel 12 with MassDOT. Suffolk, which lost work when Weiner's parcel 15 project was abandoned, is handling construction at parcel 12.

Samuels and Suffolk reached a significant milestone this year when they completed the decking over the Mass Pike. The decking will support a 657,000 square foot mixed-use project containing office, life science and retail space, together with a half-acre public plaza. The office building will serve as corporate headquarters for CarGurus, and another building will accommodate a citizenM Hotel. Public benefits include improved access for pedestrians, cyclists and commuters. Samuels is also expected to make housing and jobs exaction payments to the city totaling over \$5 million under a development impact project agreement with the BRA.

The parcel 12 project is an overdue step toward healing the urban wound caused by the Mass Pike. Contrast this with the abandoned parcel 15 project, which failed to heal the urban wound, and instead inflicted a wound on the relationship between two of Boston real estate's biggest players. ◀

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