



For a thriving New England

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May 4, 2018

Via electronic mail
ben.lynch@state.ma.us

Ben Lynch, Waterways Program Chief
Department of Environmental Protection
One Winter Street
Boston, Massachusetts 02108

Re: DDRC Gateway LLC Ch. 91 License # 8530

Dear Mr. Lynch:

It has come to the attention of Conservation Law Foundation (“CLF”) that DDRC Gateway LLC (“DDR”) is in violation of several conditions of Waterways License No. 8530, and as such, CLF respectfully requests that Massachusetts Department of Environmental Protection (“MassDEP”) take appropriate enforcement action to remedy these violations. The following outlines the current conditions of the site as observed by CLF, as well as the areas of noncompliance CLF has identified.

Of particular concern is DDR’s failure to construct and maintain a bike path connection between the Mystic River Reservation and DDR’s property boundary with the Boston and Main Railroad. That condition of DDR’s License was never fulfilled, and a similar requirement has subsequently been included as a condition in the Waterways License granted to Wynn MA, LLC (“Wynn”) (License No. 14188). According to Wynn, it has been in discussion with DDR about gaining an easement to build this connection for more than three years, but the parties have not come to a resolution. Both companies have regulatory obligations to build the path, but DDR has objected to allowing Wynn to gain access to the site for various reasons.¹ As a result, DDR is not only neglecting its own duty to construct the bike path, but preventing others from doing so as well. The bike path is a critical connection between Gateway Park and the waterfront park on Wynn’s property, which is currently under construction.

¹ Wynn has stated that these reasons include concerns over disruption to the cap placed on the DDR site covering legacy contamination, liability DDR perceives it may incur by allowing the public to traverse the property, and concerns over Wynn Casino patrons and/or employees parking for free in DDR parking lots to avoid parking fees at the Wynn Casino garage. Wynn has attempted to address these concerns, but no resolution has been reached.

Description

Licensee: DDRC Gateway LLC
License No.: 8530
Term: January 14, 1998 – January 14, 2097 (99 years)
Known As: Gateway Center
Address: One Mystic View Road, Everett, MA 02149
Status: Noncompliant

Gateway Center is a retail shopping center in Everett, Massachusetts. The site is located on filled tidelands and is therefore subject to Chapter 91 jurisdiction. DDR obtained Waterways License No. 8530 on September 12, 2001 authorizing the construction of several large retail buildings, numerous smaller retail buildings, restaurants, roadways, and parking lots. The License also includes conditions to maintain public access to the waterfront, including construction of a 23.5 acre waterfront park with associated pathways and amenities, and bike paths connecting the waterfront park to other areas.

License Requirements

Waterfront Park

Special Condition 1 requires the licensee to construct and maintain in good repair an approximately 23.5 acre waterfront park (“Gateway Park”) that includes landscaped open spaces, 2,500+/- linear feet of handicapped-accessible walkway (minimum width of 10 feet), bicycle racks, seating, trash receptacles, lighting, and a lookout platform. The licensee is required to grant a permanent easement for the area encompassing Gateway Park to the Metropolitan District Commission (“MDC”) to provide passive recreational use by the public. That easement must include a maintenance agreement, and was required to be submitted to MassDEP within six months of the issuance of the License.

Bike Paths

Special Condition 3 requires the licensee to construct and maintain in good repair 1) a bike path (varying in width from 8 to 10 feet) connecting to the MDC Mystic River Reservation and to DDR’s property boundary with the Boston and Main Railroad; 2) a connection from that bike path to the Saugus Rail Trail Bikeway, once the adjacent section of the Saugus Rail Trail Bikeway is completed; and 3) bike racks at various locations on the site.

Interpretive Displays & Signage

Special Condition 9 requires the licensee to develop a plan to design, display, and distribute interpretive materials. Specifically, Special Condition 9(a) requires a park entry sign consistent with signs typically posted at MDC reservations. Special Condition 9(b) requires an interpretive display, including a site map and information about the history of the site, to be posted at the entrance to the park. Special Condition 9(c) requires a similar such sign

to be located in a conspicuous location near the entrance to the Costco store. And Special Condition 9(d) required that brochures containing a map of the park and information about its history, environmental features, and other relevant information be made available at each store or restaurant subject to Chap. 91 jurisdiction for a full year beginning with the opening of the Costco store.

Special Condition 11 requires the licensee to place and maintain in good repair appropriate signage, clearly visible to pedestrians and motorists and each public entryway to the site and the on-site bus stop, that encourages public patronage of the walkway and parking facilities and that states the hours of public access and any reasonable rules for use. It also requires that at least one sign be placed in a prominent location stating that the walkway facilities were required by MassDEP, the license number, and the location on site where a copy of the license can be inspected by the public.

Roadway Improvements, Parking, & Accessibility

Special Condition 2 requires the licensee to construct roadway improvements to Mystic View Road and the site drive adjacent to the park, including sidewalks and landscaping, and crosswalks. The portion of the site drive adjacent to the park was required to be designed and landscaped to encourage pedestrian use and incorporate appropriate lighting, attractive banners, seating, and trash receptacles.

Special Condition 5 requires the licensee to make at least 40 parking spaces available for waterfront users and post signage designating those spaces for waterfront users.

Special Condition 8 requires the licensee to construct and maintain a handicapped-accessible pedestrian connection from the designated parking area across Mystic View Road to the entrance to the park.

Special Condition 10 requires that the waterfront park, walkways, bike path, and parking be available to the general public, free of charge, 24 hours a day unless MassDEP approves in writing other hours of operation, subject to reasonable rules.

Views and Aesthetics

Special Condition 6 requires the licensee to construct and maintain site drives and landscaping in order to provide appropriate view corridors through the site toward the waterfront.

Special Condition 7 requires the licensee to design, construct, and maintain the facades of the buildings on site in a manner compatible with the waterfront park. It also requires that all loading docks and trash disposal bins be suitably screened or landscaped to shield them from the waterfront park and walkways.

Timing

Special Condition 4 requires that a revised landscape plan be submitted to MassDEP for review and approval within 30 days of the issuance of the license. Construction of all recreational facilities and open spaces, including landscaping, was to be completed no later than May 31, 2002, with the exception of the bike path connection to the proposed Saugus Rail Trail Bikeway, which is to be completed within three months of completion of the adjacent segment of the Saugus Rail Trail Bikeway.

Special Condition 15 requires that no later than 5 years after the issuance of the license, the licensee must apply to MassDEP for a Certificate of Compliance pursuant to the Waterways Regulations and provide MassDEP with an as-built plan stamped and signed by a registered professional engineer.

Assessment of Compliance

CLF staff inspected site on April 3, 2018 to assess compliance with Waterways License No. 8530 and made the following observations:

- In violation of Special Condition 3, there is no bike path connecting to the MDC Mystic River Reservation and to DDR's property boundary with the Boston and Main Railroad.²
- In violation of Special Condition 1, there is no lookout platform in the park.
- In violation of Special Condition 9, there is no park entry sign and no interpretive displays at the park entrance or near the Costco store entrance.
- In violation of Special Condition 4, DDR did not submit a revised Landscape Plan to DEP within the stated 30 day time period after license issuance. On knowledge and belief,³ DDR has never submitted a revised Landscape Plan and as such the one on file with DEP, dated August 2001, continues to govern this site.
- In violation of Special Condition 11, there is no signage anywhere in or near the park encouraging the public patronage of walkway and parking facilities and stating the hours of public access and any reasonable rules for use. There is also no sign stating that the walkway facilities were required by DEP, the waterways license number of the project, and the location on site where a copy of the license may be inspected by public.

² CLF's understanding is that the required connection from this bike path to the Saugus Rail Trail Bikeway is subject to an MOU between DDR and the City of Everett, which is currently being negotiated.

³ Based on CLF's review of MassDEP's documentation for this site.

- In violation of Special Condition 1, there is no lighting in the park. The closest lighting is along Mystic View Road, but that does not provide lighting within the park.
- In violation of Special Conditions 1 and 8, there are significant barriers to handicapped accessibility to and within the park: 1) the walkways throughout much of the park are significantly narrower than 10 feet; 2) one sidewalk from the parking area goes Mystic View Road, but there is no connection from there into the park (there is not even a sidewalk on the other side of the road to connect to); and 3) another sidewalk from the parking area connects to a sidewalk on the other side of the road but there is a guardrail blocking the entrance to the park at that location (if you turn left, the sidewalk dead ends and if you turn right, there is an entrance to the park further up, but there is a very sharp dip in the sidewalk going down into the park at that location that would not be suitable for wheelchairs).
- In violation of Special Condition 2, crosswalks across Mystic View Road connecting the parking area to the park are ineffective because they are not well-marked and there is no signage warning drivers about pedestrians.
- In violation of Special Condition 5, there are fewer than 40 parking spaces (39) and there is only one small sign designating all of the designated parking. Further, the one small parking sign is located at the farthest end of the parking area from the entrance, so potential park users would probably never see it.
- In violation of Special Condition 1, there are only a few trash receptacles in the park (which are not located in the most convenient or conspicuous locations) and there are no pet waste receptacles in the park.
- In violation of Special Condition 2, there are no attractive banners along the drive adjacent to the park to encourage pedestrian use.
- In violation of Special Condition 6, there are few areas in the park where you can see through the vegetation to the Mystic River.

Mitigation

MassDEP should hold DDR responsible for failing to comply with the conditions of License No. 8530 by issuing an enforcement action. Additionally, MassDEP should require DDR to provide compensatory mitigation commensurate with the duration and severity of the site's deprivation of the proprietary rights of the Commonwealth, including public access and use, and the degree of privatization that has existed at the site since the date of license issuance. Notably, the public should have had access to and use of the required bike path and viewing platform on or before May 31, 2002, yet for nearly 16 years, the public has been denied these amenities. Similarly, the public has never received the full benefits of Gateway Park due to the lack of any welcoming signage, handicapped accessibility, lighting, and other required features that are essential to park

functionality and use. It is well within DEP's authority to require compensatory mitigation for DDR's blatant disregard for these license conditions.

This mitigation must also take into account the economic benefit DDR derived from failing to fulfill its obligations under License No. 8530. Further, if the required bike path is constructed by Wynn, DDR must still be held accountable for the costs it would have incurred, as well as the economic benefits it received, by avoiding those costs. DDR should be instructed to work collaboratively with the City of Everett and community partners, including the Mystic River Watershed Association, to determine the appropriate alternative use of those funds on or in close proximity to the Gateway Center site.

We request that you keep us apprised of enforcement actions taken with regard to these violations. Thank you for your attention to this important matter.

Sincerely,



Deanna Moran
Director, Environmental Planning



Heather A. Miller
Staff Attorney