



Malden • Medford • Everett

August 19, 2016

BY EMAIL: frank.taormina@state.ma.us

Frank Taormina, Regional Planner
Department of Environmental Protection
Commonwealth of Massachusetts
1 Winter Street, 5th floor
Boston, MA 02108-4747

RE: Comments on Chapter 91 License Application of
Suffolk Square Associates III Limited Partnership
for development of 295 Canal Street, Malden, MA
(No. W16-4721-N)

Dear Mr. Taormina:

Thank you for this opportunity to comment on the Chapter 91 Waterways License Application of Suffolk Square Associates III Limited Partnership with regard to building demolition, new commercial development, and pedestrian walkway construction at 295 Canal Street (a/k/a 171 Medford Street) in the city of Malden, directly abutting the Malden River. We are following up on comments from the six members of the Friends of the Malden River (FoMR) and a member of the staff of the Mystic River Watershed Association (MyRWA) who attended and spoke at a public hearing on this project, which was held at Malden City Hall on July 28, 2016.

As noted in Executive Office of Environmental and Energy Affairs (EOEEA) Secretary Matthew A. Beaton's May 20, 2016 Environmental Notification Form Certificate, Suffolk Square Associates III Limited Partnership (the Developer) is subject to Chapter 91 jurisdiction because it plans to demolish a structure, build another structure, and locate parking – all of which are non-water dependent uses – within filled private tidelands

along the existing course of the river.¹ MyRWA and FoMR file these comments both to describe the environmental mitigation that should be required by the Massachusetts Department of Environmental Protection (DEP) under Chapter 91, and to elaborate on EOEEA's strong recommendation that the Developer collaborate with MyRWA and FoMR, who on May 10, 2016 filed public comments on the Developer's Environmental Notification Form (ENF) regarding the project.

I. Introduction

By way of background, the Mystic River Watershed Association (MyRWA) is a 501(c)(3) nonprofit organization founded in 1972 by a group of concerned community residents. MyRWA's mission is to (i) protect the Mystic River Watershed, (ii) restore and maintain clean water and the natural environment in a healthy state in the Mystic basin's 22 communities, and (iii) promote responsible stewardship of our natural resources through educational initiatives in the watershed. As a small organization, MyRWA accomplishes its mission by forging strong links with citizens' groups, universities, businesses, and government agencies.

Friends of the Malden River (FoMR) is a grassroots group of community members – most of them residents of one of the three cities (Everett, Malden, and Medford) that ring the visible Malden River – who are deeply concerned about the ecological and recreational health of the river. FoMR's mission is “to promote awareness of and interest in the Malden River, improve its water quality, and increase access for public enjoyment.” Formed in 2012, the group is strongly committed to restoring the Malden River to, and preserving it as, a priceless community amenity and natural resource.

At the start, MyRWA and FoMR want to be clear that we fully support the objective of reintegrating this long-abandoned industrial site into the area's economy. As noted in our May 10 ENF comments, we understand the reasoning behind plans to demolish the existing structure and replace it with one that is more suited to the current character of the neighborhood. Indeed, it is our position that the commercial revitalization of the area surrounding the Malden River, and the creation and expansion of public access to

¹ The property arguably should have been licensed under Chapter 91 or predecessor authority long ago, but apparently was not. Regardless, the Developer's project would require revisiting and, presumably, amending and updating any earlier license that did exist, so the lack of a license is not directly relevant to this proceeding (except, perhaps, to underline the need to consider the level of mitigation and abatement that Chapter 91 requires, now that we are in the second decade of the 21st century).

the river and its riparian zone, must go hand in hand. As one of the Developer's representatives stated at the Chapter 91 hearing on July 28, this project offers "a remarkable chance to open the river to the public."²

II. Comments

Our comments here focus on the public riverfront walkway that the Developer is required to create along the top of the river bank at the western boundary of its property, and its link to the adjoining property at 195 Canal Street, which is under parallel ownership.³ Fundamentally, we seek to better connect the 295 Canal Street project and its required public right-of-way to the future of the area—a future that (as we noted in our ENF comments) is certain to be influenced by the construction of the Wynn casino in Everett, development of the former GE site directly to the south of this project, and expansion of the River's Edge residential and office complex just across the river in Medford.

The Developer's obligations are guided by the applicable Chapter 91 regulations (310 CMR 9.00 et seq.). Thus, our argument proceeds as follows:

1. The Developer must create a public riverfront walkway at 295 Canal Street that provides more amenities and accessibility, and is more functional and attractive than the walkway that now follows the north and west (riverside) boundaries of the property at 195 Canal Street.
2. The riverfront walkway at 195 Canal Street violates its existing Chapter 91 licenses because, as noted below, it does not meet all of the requirements of

² This supportive voice was that of Brian G. Cafferty, vice president of legal affairs for Combined Properties, Inc. Suffolk Square Development, Inc. is the corporate general partner of the Developer. The president of Combined Properties is also the President of Suffolk Square Development, Inc. The Developer (that is, Suffolk Square Associates III Limited Partnership) owns 295 Canal Street.

³ The office building at 195 Canal Street, which currently houses a Cambridge Health Alliance clinic, is owned by the 195 Canal Street Associates Limited Partnership, the corporate general partner of which is 195 Canal Street Associates, Inc. The president of Combined Properties, Inc. is also the president of 195 Canal Street Associates, Inc. Combined Properties manages the building at 195 Canal Street.

the regulations. (e.g., 310 CMR 9.35, 9.51 and 9.52). And, because those licenses were granted more than a decade and a half ago, DEP should demand a revamped walkway at 195 Canal Street.

3. The riverfront walkway at 295 Canal Street should be developed in concert with an improved walkway at 195 Canal Street, and in no event should the walkway at 295 Canal Street be as rudimentary as the one now found at 195 Canal Street.
4. DEP should revise the existing Chapter 91 license for 195 Canal Street to retain the perpendicular public walkway and its granite markers, which lie along the east-west property line between 195 and 295 Canal and link the Northern Strand Community Trail to the public riverfront walkway at 195 (and, soon, 295) Canal Street.
5. The public riverfront walkway at 295 Canal Street should include specific features – described here – that will make it far more attractive and accessible to members of the community as well as, potentially, to office workers in the Developer’s new building.

A. The riverfront walkway at 295 Canal Street must minimally adhere to the requirements of Chapter 91 and existing Chapter 91 licenses for 195 Canal Street.⁴

The Developer notes in its ENF and the Secretary affirms in his ENF Certificate that the public way along the riverbank at 295 Canal Street must, in general, be “consistent with the design of the 195 Canal Street walkway and feature a similarly ornamented entrance...” However, this is not the correct standard. 195 Canal Street is not in compliance with the Chapter 91 regulations *or* with the Chapter 91 Licenses issued for that project. See 310 CMR 9.35(5), 9.51(2)(d), 9.52(1)(a)1. The current pathway does not meet the regulatory requirement for ongoing maintenance, for landscape design, or for the promotion of active use of the shoreline (the modest gravel walkway here is hardly an “esplanade”⁵).

⁴ The following four sections (A-D) encompass and expand on the argument set forth in numbered paragraphs (1) through (5) above.

⁵ See 310 CMR 9.52(1)(a)1.

Moreover, one of the two existing Chapter 91 licenses for 195 Canal Street (License No. 8525, dated June 30, 2000), in Special Condition 3, states that the riverfront walkway at 195 Canal Street

shall be of a hard-surfaced and durable material, be wheelchair and bicycle accessible, ... [and] contain benches, lighting, trash receptacles, and landscaping.

A recent inspection⁶ revealed that the existing walkway does not meet this standard. First, trash receptacles are missing.⁷ Second, it is far from clear that the narrow, uneven, gravel pathway is actually wheelchair and bicycle accessible. Third, the only lighting existing at the site is parking lot lighting – intermittent, towering mercury vapor lamps that are intended to create safe passage for trucks and automobiles, not for pedestrians. Fourth, the second Chapter 91 license for 195 Canal Street (License No. 8542, dated August 30, 2000), in Special Condition 2, calls for a “twelve (12) foot wide area along the entire project shoreline for a publicly accessible riverfront walkway”⁸ – a walkway that appears to be wider than the one that, at the July 28 public hearing, the Developer promised to provide at 295 Canal Street. Finally, there is little evidence of effective, human-scale landscaping at the site. In fact, except for some clearance of vegetation along the bank, little evidence exists of any landscaping at all.⁹

The bottom line is that the Chapter 91 license for 295 Canal Street must start with the written requirements of Chapter 91 and the applicable Chapter 91 license for 195 Canal Street (not with the currently existing, inadequate walkway), and then provide an amenity better suited to the present day. After all, those written requirements are now 16 years old.

⁶ On August 2, 2016, by one of the signers of these comments.

⁷ Both Chapter 91 licenses applicable to the property (see below) contemplate (in Special Condition 3 of each) that the license holder will take reasonable measures to limit the “deposit of refuse of any kind” on the public right-of-way.

⁸ License No. 8525 appears to contemplate a 10-foot minimum width, but it should be read as modified by License No. 8524, which was issued two months later than License No. 8525.

⁹ As the ENF Certificate (at p. 2) states of the adjacent 295 Canal Street site, “[t]he Bank is sparsely vegetated with trees and common reed (*Phragmites australis*).”

- B. DEP should seek to upgrade the riverfront walkway at 195 Canal Street to meet contemporary expectations, and to seamlessly connect with the new public walkway along the riverbank at 295 Canal Street.

Given that the two Chapter 91 licenses that relate to the property at 195 Canal Street – License Nos. 8525 and 8524¹⁰ – and that set baseline conditions for the property at 295 Canal Street, are more than a decade and a half old and have passed the half-way point of their terms, DEP should craft a Chapter 91 license for 295 Canal Street that exceeds the design standards that once applied to 195 Canal Street, and create an incentive for the owner of 195 Canal Street (in effect, Combined Properties) to upgrade the public riverfront walkway there to meet the same contemporary design standards. In that fashion, the public walkway along the two properties will, as described in Special Condition 3 of License No. 8525, “create the appearance of a seamless riverfront park.”

- C. DEP should revise the existing Chapter 91 license for 195 Canal Street to retain the perpendicular public walkway and its granite markers along the east-west property line between 195 and 295 Canal Streets.

This perpendicular right-of-way links the Northern Strand Community Trail to the public’s riverfront walkway along the eastern bank of the Malden River. The Northern Strand Community Trail (also called “Bike to the Sea”) connects the Malden River and environs to cities and towns to the northeast and, ultimately, to the Atlantic Ocean. This is an important connection that should be retained and indeed improved (see our comments in Section D. below).¹¹ If it is not retained at this point, a parallel connection across Canal Street should then be provided at the northern entrance to the riverfront walkway at 195 Canal Street, with the Developer and the Massachusetts Department of Conservation and Recreation (DCR), the owner of the perpendicular slice of land that

¹⁰ Although numerically prior to No. 8525, No. 8524 is, as noted, dated August 30, 2000, two months later than No. 8525. No. 8524 was issued to the prior owner of the 195 Canal Street property, Rohm Tech, Inc., and No. 8525 was issued to its current owner, 195 Canal Street Associates Limited Partnership, which, as stated, is controlled by Combined Properties. No. 8524 permitted on-site remediation of soil contaminants, while No. 8525 allowed the new owner to maintain the office building at the site.

¹¹ Indeed, the Developer’s own affiliate cites the Northern Strand Trail as an important project-related amenity (see Combined Properties’ “Project Spotlight” marketing page at www.combinedproperties.com/295-canal-st/ (“The Northern Strand Bike Trail connecting Everett to the beaches in Revere and Nahant runs through Malden. The Everett and Malden portions of the trail were just paved and are open for travelers which run adjacent to the project.”)).

ends at the northern entrance, coordinating with MyRWA and FoMR to complete the work.

D. The public walkway at 295 Canal Street should offer features that will make it more attractive to members of the community as well as, potentially, to office workers in the Developer's new building.

We want to emphasize three basic positions here:

1. We fully support the revitalization of the 295 Canal Street parcel as a useful member of the commercial community.
2. We seek to work with the Developer and associated entities to help ensure that the final riverfront walkway is an attractive public amenity. This would include active collaboration with Combined Properties – consistent with that described by Secretary Beaton in the ENF Certificate (at p. 4) – to include effective design input on the project.¹²
3. We believe that such collaboration and input is particularly appropriate where, as here, the Developer already has requested and received several variances from local and state law (that is, concessions by local and state officials) so that it can construct the building that it wants to construct.¹³

¹² This is particularly fitting in this case and in this location, given that Combined Properties owns, controls, or has a management interest in several other riverfront properties on the Malden, specifically 300 Commercial Street (a/k/a 230 Medford Street), 326 Commercial Street, and 378 Commercial Street. Because these properties should in the future also offer a first-rate riverfront walkway, it makes sense to begin a meaningful, long-term negotiation with Combined Properties right now. One of them, at 300 Commercial Street, which houses the Comcast Service Center, features an outside picnic area and is described by Combined Properties' marketing materials as being "on [the] scenic Malden River." See www.combinedproperties.com/properties-category/full-portfolio/.

¹³ See, e.g., 310 CMR 9.51(3)(e) (building will violate 55-foot height limitation; see Developer's ENF at pp. 2 and 8). A leading recent commentary on Chapter 91 notes existing precedent for including citizens and citizens' groups in the negotiation of waterways license conditions. It cites, as an example, a community room for use by neighborhood groups, where

DEP may well consult with these groups after the public comment closes to get additional information about their needs. This possibility underscores the importance of the proponent developing and maintaining communications, and ideally support for the project, among local groups.

Accordingly, we ask DEP to issue a Chapter 91 license requiring that the public riverfront walkway at 295 Canal Street meet the following minimum design standards (some of which were noted in our May 10 comments on the ENF). If the Developer objects based on cost, it should be required to present credible cost data to support its position.

First, to be consistent with the existing and planned area network of multi-use public walkways, the walkway along the river to the west of the building and parking lot should be paved. Although we have previously argued that the paved area of the parking lot is too large, here we reiterate our view that the solidly paved area of the walkway is too small – currently, in fact, zero.¹⁴ This would make for a more useful and safe amenity for strollers, walkers and cyclists, and it would better integrate with bicycle and walkway plans farther south and at other points around the Malden River.

Second, we recommend that the development include significant and appropriate landscaping along the walkway, including native plants that are ecologically suited to the riverbank (a useful resource of these plants can be found here: <http://newp.com>). Or, the Developer could adapt the design features at the River's Edge in Medford to the site.¹⁵ In any event, DEP should require the Developer to furnish additional detail sufficient to demonstrate that it will be able to meet the requirements of Special Condition 3 of License No. 8525 and Special Condition 2 of License No. 8524 (e.g., accessibility, benches, lighting, trash receptacles, landscaping, and a 12-foot minimum right-of-way), as revised to meet the needs of the residents of the city of Malden in 2016. With additional attention, this area could become an attractive linear parklet, enhancing this section of the river, the value of the property, and the lives of those working at or visiting 295 Canal Street. Related to this, we request the following:

- (i) An informational kiosk or historic station similar in design to that at Baxter Park, Somerville, or at King's Chapel Burying Ground, Boston, should be placed adjacent to the path. The Developer should collaborate with

Lahey, William L. and Timothy J. Roskelley, "Tidelands and Waterways Law," §11.6.4, p. 11-26, in McGregor, Gregor I., ed., *Massachusetts Environmental Law*, vol. I, 3rd ed., 1st supp. (2012).

¹⁴ The current stone dust walkway at 195 Canal Street is uneven and poorly maintained, and at the very least should be upgraded, if this approach is to be taken at 295 Canal.

¹⁵ As Combined Properties Vice President of Design Services Shawn M. Burns told some of us immediately following the July 28 public hearing, he is quite familiar with the award-winning landscape design work that has been completed at River's Edge.

MyRWA, FoMR and the Malden Historical Society on the placement, design and wording.

- (ii) Signage should be placed at the entrance to the walkway providing rules for use, hours, etc. Design would be similar to that of the historic station.
- (iii) A pet waste station should be installed at the entrance to the walkway that includes a mitt bag dispenser and a sealed waste receptacle that controls odors.
- (iv) Tree density along the riverbank at 295 Canal Street should approximate that adjacent to the parking lot at 195 Canal Street. Species should include a number of river birch trees.
- (v) At least as many benches should be provided as are already sited at 195 Canal Street. The Developer also should strongly consider creating a landscaped viewing, outdoor seating, and picnic area at the southwest corner of the property.

Third, we urge the Developer to include a crosswalk and ADA-approved ramp that would connect the existing east-west spur trail, which runs from the riverbank to Canal Street between the Cambridge Health Alliance at 195 Canal Street and the property at 295 Canal Street. This would connect the Northern Strand Trail to the proposed office and retail development at 295 Canal Street. In this regard, we urge the Developer to install two new granite pillars at the entrance to the walkway on Medford Street at the southwest corner of the site, and leave the existing pillars at the southern end of 195 Canal Street.¹⁶

Fourth, we agree with Ward One City Councilor Peg Crowe that the paved vehicular entrance to 295 Canal Street located on Medford Street should be removed, as it is a safety hazard and is unnecessary to the sound functioning of, or access to, the building by car. This will allow the Developer to add landscaping and passive recreational features to the site, and further protect pedestrians and cyclists.¹⁷ At the hearing,

¹⁶ As noted, if this approach is rejected, at minimum the Developer and its affiliate, Combined Properties, should work with DCR, MyRWA, and FoMR to install a similar crosswalk at the northern end of the riverfront walkway at the northeast corner of 195 Canal Street.

¹⁷ See, e.g., 310 CMR 9.51(1)(d), regarding the need to prevent significant conflict between members of the public exercising their Chapter 91 rights and “traffic flows and parking needs.”

Frank Taormina, Regional Planner, DEP
Comments of MyRWA and FoMR
August 19, 2016
Page Ten

Councilor Crowe also voiced support for a traffic study, and we agree with this, as it will help to ensure the safety of walkers and cyclists seeking access to the river path.

Fifth, the Developer and Combined Properties should implement more strenuous measures to control and clean up after the burgeoning population of Canada geese at 195 and 295 Canal Streets. We recommend that the Developer consult with the owner of River's Edge to develop an effective strategy. This would remove a major obstacle to public enjoyment of the riverfront walkway.

Finally, reiterating a comment responding to the ENF, the Developer should provide details on how the operation and maintenance (O&M) of the proprietary water quality units will be documented and tracked.

III. Conclusion

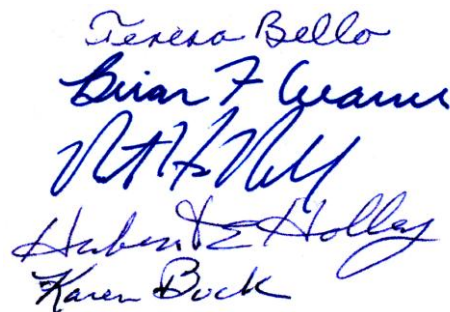
In closing, we appreciate the work that the Developer has done to reconvert this idle site into a useful member of the community. We believe that, with a bit more thought and planning – particularly in collaboration with MyRWA and FoMR – this project will be an excellent neighbor in a neighborhood thirsting to reconnect with its own river.

Thank you for this opportunity to comment on this Chapter 91 license application. If you have any questions or require additional information please contact MyRWA or FoMR at (781) 316-3438 or by emailing amber.christoffersen@mysticriver.org.

Sincerely,



EkOngKar Singh Khalsa,
Executive Director
Mystic River Watershed Association



Teresa Bello
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Friends of the Malden River

Frank Taormina, Regional Planner, DEP
Comments of MyRWA and FoMR
August 19, 2016
Page Eleven

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