

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

LAND COURT DEPARTMENT
DOCKET No. 23 PS 000673 (Smith, J.)

BELLEVUE HILL IMPROVEMENT
ASSOCIATION, INC.,

Plaintiff,

v.

BOSTON ZONING BOARD OF APPEAL,
and UPTON INVESTMENT PARTNERS
LLC (sic),

Defendants.

OPPOSITION TO PLAINTIFF'S MOTION TO AMEND COMPLAINT

Upton Belgrade Investment Partners LLC (“Upton”) opposes the Plaintiff’s motion to amend the complaint for the following reasons:

When Upton’s counsel saw a motion to amend in their inbox, they readily assumed that the Plaintiff had remedied the pleading’s shortcomings.

Since the Plaintiff filed its original Complaint, Upton’s counsel filed a motion to dismiss and a memorandum explaining that the “exclusive remedy” for a party aggrieved by a decision of the Board of Appeals was an appeal under c. 665 § 11, and that the Board of Appeal was not a state agency as defined by c. 30A § 1. In response to Upton’s observations, the Plaintiff proposes to amend its Complaint by adding nine plaintiffs to qualify for a “ten taxpayer” suit, presumably under G.L. c. 214 § 7A, keeping the c. 30A count, and *not* adding a count under c. 665 § 11.

As liberal as Rule 15(a) is concerning the amendment of pleadings, this one is simply too frivolous to allow. While leave is to be “freely given,” it is only “when justice so requires,” Mass. R. Civ. P. 15(a), and Upton submits that justice requires the motion to be denied in strong and emphatic terms.

**A. The Plaintiffs Have Failed To Comply With
G.L. c. 214 § 7A, So The Amendment Is Futile**

There are certain well-recognized reasons for denying a motion to amend. One is where the Court determines that the amendment is futile. Marchese v. Boston Redevelopment Authority, 483 Mass. 149, 151 n. 4; Dzung Duy Nguyen v. Massachusetts Inst. of Tech., 479 Mass. 436, 461 (2018).

The proposed Amended Complaint attempts to cure what the original plaintiff correctly perceived to be a jurisdictional dagger aimed at its corporate heart: standing. This it does by adding the “ten taxpayers” required to assert an action to enforce certain “public” rights to protect the Commonwealth’s natural resources from the alleged environmental harm (falsely alleged to occur as a result of a non-existent encroachment of the Project’s structure on DCR property. This relates to the Plaintiff’s original Article 97 claim against the *Board of Appeal* for not acting upon its complaint (during the *zoning* process) about the *Commonwealth’s* noncompliance with a land disposition from forty-seven years ago. See Amended Complaint, ¶ 19. It pled that the Board of Appeal’s decision to grant to Upton the right “to construct a building that continues to encroach upon public land” (it doesn’t, see *infra*) is itself a violation of Article 97. The remedy they seek is not from the administrative agency equipped to respond – they want the zoning decision nullified – but nowhere in the pleading is there a clue to how the Board of Appeals has any duty to act upon these shopworn, well-refuted claims. See proposed Amended Complaint at p. 6.

Moreover, the plaintiffs’ right to bring such an action requires that they first “direct a written notice of such violation or imminent violation... to the agency responsible for enforcing the statute... to the attorney general, and to the person violating or about to violate” the statute. Id. That agency would be the Department of Conservation and Recreation, the successor to the Metropolitan District Commission, and the agency that manages the Commonwealth’s parks and parkways. G.L. c. 92 § 33.

But the amended pleading does not allege that such written notice was given to any party, the Plaintiff’s recent document production contained no correspondence with DCR or the Attorney General on the subject, and upon follow-up with the Plaintiff’s counsel in a Rule 7 conference held on March 6, 2024, the Plaintiff acknowledged that there was no written communication with DCR – all communications between the Plaintiff/counsel and DCR and/or local legislators was verbal only. See Affidavit of Ryan M. Gazda, Esq., attached hereto as Exhibit A.

Consequently, the ten plaintiffs cannot maintain an action – even against DCR – and the Complaint must be dismissed.

B. The Plaintiffs’ Claim Is to the Wrong Court

The statute providing such right to “not less than ten persons” grants jurisdiction to the *Superior* Court to determine whether such damage is occurring or about to occur, and to restrain such occurrence from continuing. G.L. c. 214 § 7A. *For that reason alone*, the claim cannot be heard in this Land Court.

C. The Chapter 30A Claim Is Still Frivolous

Despite being on notice of the original Complaint's fragility due to the fact that the Board of Appeals is clearly not a "state agency" as defined in Chapter 30A,¹ the Plaintiff restates the cause of action, verbatim, as though *its*' good faith review of the statute yielded a different, and defensible, conclusion. There isn't one. The Boston Board of Appeals is not a state agency, and no argument is going to change that.

The Court does not have jurisdiction to hear the count to enforce Article 97. For the same reasons stated in its Motion to Dismiss, the new proposed plaintiffs add nothing to cure the enduring infirmities of the original Complaint.

D. The Article 97 Claim Is Belied By Official Records

The Amended Complaint is futile *without* consideration of the manifest falsity of the principal allegation: that the Project "continues to encroach" on the DCR's parkway buffer. Plaintiff's Proposed Amended Complaint ¶ 42. This was pointed out in Upton's motion papers by reference to the correspondence from DCR to Jake Upton indicating the DCR's approval and acknowledgement that the project was consistent with the Commonwealth's interest in the land. See Exhibit J to Upton Motion to Dismiss. The DCR's approval letter was belittled by the Plaintiff's counsel as "immaterial because it cannot nullify by letter the explicit provisions of a deed," a statement that is horribly mistaken in respects too numerous to discuss here. See, Plaintiff's Response to Defendant's Statement of Material Facts ¶ 15. One, however, deserves emphasis: the DCR approval letter states the following with respect to what improvements are taking place on its property: "certain site and infrastructure improvements or underground

¹ "'Agency', any department, board, commission, division or authority *of the state government* or subdivision of any of the foregoing, or official of the state government, authorized by law to make regulations or to conduct adjudicatory proceedings..." G.L. c. 30A § 1.

vehicular parking and surface-level open space landscape and lighting improvements.” See Exhibit J to Upton Motion to Dismiss.

E. The Plaintiffs’ Article 97 Claim Is Against the Wrong Defendant

If that isn’t enough reason to stop this trainwreck from harming the innocent, it is worth pointing out that if the Plaintiff and its compatriots *really* intended to right an environmental wrong, they would have done what c. 214 § 7A requires, and sue the agency that’s responsible for the natural resource – the agency they didn’t notify, and the agency whose letter of consistency they didn’t acknowledge before filing this proposed Amended Complaint. That letter dated January 25, 2023 was one action that triggered the Plaintiff’s right to challenge that determination. See Exhibit J to Upton Motion to Dismiss. They did not.² The other opportunity occurred back on June 6, 2019, when DCR submitted its “report” to the co-chairs of the House and Senate Ways and Means Committees on its “study of a certain parcel...to ensure that current use of the land complies” with the terms of the statutory mandate and the conveyance. See correspondence (and attachments) from Leo P. Roy, Commissioner, Department of Conservation & Recreation dated June 6, 2019, attached hereto as Exhibit B; see also 1977 legislative approval of land sale attached hereto as Exhibit C. That study and report was compelled by amendment inserted into the 1977 state budget, at a time coinciding with Upton’s initial proposal to develop the property as a private charter school for the youth of Roxbury who did not have a public high school of their own. See Exhibit B, Chapter 851 of the Acts of 1977. The story behind that amendment remains untold, but the story of the fight against the charter school was ugly indeed.

² If this matter proceeds further, Upton has received a series of correspondences between local legislators and DCR concerning the very issue the plaintiffs here raise, going back to 2016. It seems inconceivable to Upton that the Plaintiff and its counsel would have had no knowledge of or involvement in the legislators’ correspondence with DCR, in which DCR forcefully and pointedly addressed each of the legislators’ arguments (the very same arguments made in Plaintiff’s Complaint), before it issued Upton its approval letter. See correspondence between Representative Michael Rush and Senator Edward Copping and DCR Commissioner Roy/Deputy Commissioner Geigis, all attached hereto as Exhibit D.

Enough is enough. The “exclusive remedy” language of c. 665 § 11 means what it says. The Plaintiff had fair warning from the pending motion to dismiss, but it’s sticking to the cards it holds, as though the black-letter law says something entirely different.

CONCLUSION

WHEREFORE, the Defendant respectfully requests that this Honorable Court deny the Plaintiff’s Motion to Amend, dismiss the Plaintiff’s Complaint and award the private defendant costs; and upon further findings pursuant to motion filed in accordance with G.L. c. 231 § 6F, attorney’s fees.

Respectfully Submitted,
**UPTON BELGRADE INVESTMENT
PARTNERS, LLC,**
By its Attorneys,

/s/ Michael W. Ford

Michael W. Ford (BBO # 644807)
Peter B. Morin (BBO # 355155)
Ryan M. Gazda (BBO # 693573)
FORD LAW P.C.
245 Sumner Street, Suite 110
East Boston, Massachusetts 02128
Tel./Fax: (617) 328-3400
mford@fordlawpc.com

Date: March 11, 2024

CERTIFICATE OF SERVICE

I, Michael W. Ford, hereby certify that on this 11th day of March 2024, a copy of this document was served via e-mail transmission upon:

Paul L. Nevins, Esq.
Law Office of Paul L. Nevins, Esq.
70 Oriole Street
Boston, Massachusetts 02132

Jolie Main, Esq.
City of Boston Law Department
1 City Hall Square, Room 615
Boston, Massachusetts 02201

/s/ Michael W. Ford

Michael W. Ford

Exhibit “A”

COMMONWEALTH OF MASSACHUSETTS

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DOCKET No. 23 PS 000673 (Smith, J.)

BELLEVUE HILL IMPROVEMENT
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LLC (sic),

Defendants.

AFFIDAVIT OF ATTORNEY RYAN M. GAZDA

I, Ryan M. Gazda, Esq., undersigned counsel for the Defendant Upton Belgrade Investment Partners, LLC in the above-captioned matter, do hereby affirm and make the following statements under oath:

1. I am a duly licensed attorney in good standing in the Commonwealth of Massachusetts.
2. I am an attorney of record for the Defendant Upton Belgrade Investment Partners, LLC (the "Defendant") in the above-captioned matter.
3. On February 29, 2024, I requested a Rule 7 discovery dispute conference with counsel for the Plaintiff Bellevue Hill Improvement Association Inc. (the "Plaintiff") regarding certain concerns with the Plaintiff's discovery responses. See correspondence attached hereto as Exhibit 1.
4. As referenced in the attached correspondence, we had noted that the Plaintiff's "document production did not include any correspondence between you (BHIA) and either DCR or legislators Coppinger or Rush concerning [purported "violations" of deed restrictions referenced in Plaintiff's Complaint]. Please advise and confirm if the BHIA has produced all documents concerning its involvement (as represented by its officers and directors or through its counsel) in the matter of deed restrictions on the Clay Chevrolet parcel, and if not, please provide a privilege log for those documents."
5. On March 6, 2024, I conducted a Rule 7 discovery dispute teleconference with counsel for the Plaintiff, who in response to the above inquiry, alleged that there has been no written

correspondence between the BHIA and the DCR and/or state legislators concerning this issue, and that any correspondence between them had been verbal only.

Signed under the pains and penalties of perjury this 11th day of March 2024.

A handwritten signature in black ink, appearing to read "Ryan M. Gazda", with a long horizontal flourish extending to the right.

Ryan M. Gazda (BBO # 693573)

Exhibit “1”

I FORD LAW P.C.

February 29, 2024

VIA E-MAIL TRANSMISSION

Paul L. Nevins, Esq.
Law Office of Paul L. Nevins, Esq.
70 Oriole Street
West Roxbury, Massachusetts 02132

**Re: Bellevue Hill Improvement Association, Inc. v. City of Boston, et al.
Massachusetts Land Court, Docket No. 23 PS 000673 (Smith)**

Dear Paul:

This letter is written pursuant to Land Court Rules 6 and 7 to articulate the Defendant Upton Belgrade Investment Partners, LLC's objections to certain of the discovery responses submitted on behalf of your client. In light of the number of our concerns, we find it necessary to list them to provide a fair record for any future motion. We are required by Rule 7 to discuss each of these matters with you prior to seeking the court's coercive powers.

I. Interrogatories Signed by Virginia Gass.

Interrogatory No. 1: State your name, occupation, educational background, residential address, social security number, date of birth, and summary of criminal convictions.

Plaintiff's Response: "The Plaintiff objects to the interrogatory on the grounds that it seeks information that is not relevant, is unduly burdensome, calls for confidential information, and is not reasonably calculated to lead to the discovery of otherwise admissible evidence. The Plaintiff further objects to the interrogatory on the basis that it is vague, ambiguous, overbroad as to time, place and subject matter, and therefore unduly burdensome and designed to harass the Plaintiff. In addition, the interrogatory with respect to social security number and the personal identifiers violates privacy rights protected under Massachusetts law. A court is required to balance the Complainant's legitimate rights to privacy against a defendant's purported need for information to defend against a lawsuit. See, for example, Bratt v. International Business Machines Corp., 392 Mass. 508, 467 N.E.2d 126 (1984). The majority of reported decisions that involve violations of a plaintiff's right to privacy concern, as here, the dissemination of information. See Cort v. Bristol-Myers Co., 385 Mass. 300, 307 n. 9 (1982), citing Hastings & Sons Publishing Company v. City Treasurer of Lynn, 374 Mass. 812, 819 (1978) (a case which involved the disclosure of police payroll records), Commonwealth v. Wiseman, 356 Mass. 251, 258-262 (169) (the Bridgewater "Titicut Follies" case); Tower v. Hirschorn, 397 Mass. 581 (1986) (release by a doctor of confidential patient medical information); and Bratt v. International Business Machine Corp., 392 Mass. 508 (1984) (which held that intracorporate communication constituted sufficient disclosure to violate M.G.L. c. 214, §1B). See also Restatement Of Torts, Second and O'Conner v. Police Commissioner Of Boston, 408 Mass. 324, 557 N.E.2d (1990)."

Defendant's Objection to Response: You are required to provide basic personal identifying information regarding the individual answering the interrogatories on behalf of the Plaintiff. Pursuant to Mass. R. Civ. P. 26(b)(1), "parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." This is elementary, the Plaintiff must supplement its response to provide additional personal identifying information for Ms. Gass, who purports to sign the interrogatories on behalf of BHIA.

Interrogatory No. 3: Identify each individual or entity likely to have discoverable information concerning the Litigation, and identify the discoverable information.

Plaintiff's Response: Similar objection on grounds of relevance, burdensomeness, etc.

Defendant's Objection to Response: This is the most fundamental discovery question asked of every party in all litigation. It requires a party to provide the names of any person the respondent (Ms. Gass, in her capacity) is aware of that may have information concerning the dispute. It requires no independent investigation. For instance, if Ms. Gass is aware of communications between any officer or director of BHIA and Senator Rush, Representative Coppinger or the Department of Conservation and Recreation, she would have to disclose the name(s) of those persons and the nature of their communications. The interrogatory is relevant and must be answered.

Interrogatory No. 10: Please describe in detail the substance of any communications you, your agents or representatives have had with any other third party with respect to the Proposed Project, including but not necessarily limited to Rita S. Pollak, Robin E. Fabiano, Donald P. Milardo, Paula B. Olender, Hereen Makanji, Elisabeth A. Wallace, and John E. Ryan.

Plaintiff's Response: Similar objection on grounds of relevance, burdensomeness, etc.

Defendant's Objection to Response: There is no basis whatsoever to claim that communications among citizens in a civic endeavor are privileged from discovery, least of all when they may be involved in litigation towards a common purpose (absent a properly disclosed privilege and its basis). The term "third party" is not "vague" or "ambiguous," the meaning of "agents or representatives" is not "inapplicable," BHIA is a corporation and anyone who speaks on its behalf (including, especially, its counsel) is an agent or representative; the information is relevant and discoverable, and it must be produced.

Interrogatory No. 11: Please identify the name, street address, email address and telephone number for every member, shareholder, officer and director of the Bellevue Hill Improvement Association, including each of its officers and directors.

Plaintiff's Response: Similar objection on grounds of relevance, burdensomeness, privacy etc.

Defendant's Objection to Response: BHIA is a corporation that acts through a Board of Directors chosen by a "membership." [Articles of Organization Articles III-IV]. The Defendant is entitled to identify who the Board of BHIA is speaking for, where they live, whether they have any property interest at stake, and whether they share their Board's position concerning its involvement in this litigation. The Defendant is entitled to examine the nature of any communication between the Board of directors and BHIA's members concerning this Project. The information is relevant and discoverable and it must be produced.

Interrogatory No. 13: Please describe in detail the substance of any communications between any member of your Board of Directors and any of your members with respect to the Proposed Project.

Plaintiff's Response: Similar objection on grounds of relevance, burdensomeness, privacy etc.

Defendant's Objection to Response: For the same reason stated in its objection to your answer to #11, your communications with your corporate members concerning the Project is relevant, discoverable, and it must be produced.

Interrogatories Nos. 14-24: Interrogatories 14 through 24 request the witness to "state the basis" of ten substantive claims made in BHIA's complaint. "State the Basis" is defined in the Instructions (in accordance with Court rules) thusly:

"The party shall provide a substantial summary of the factual basis supporting the claim, allegation, or defense at the time the interrogatory is answered. The summary shall: (a) identify the essential acts or failures to act forming the substance of the claim, allegation, or defense, (b) identify the persons and entities that, through firsthand information or possession of documents, are the sources of the party's information regarding the claim, allegation, or defense, and (c) when one or more documents is the basis of the claim, allegation, or defense, such as a written contract in a contractual claim or defense, or a written misrepresentation in a misrepresentation claim, identify (or provide as part of the interrogatory answer a copy of) each such document. In stating the basis, a party may not withhold information from the interrogatory answer because it derives from attorney work product or was obtained in anticipation of litigation if the party intends to offer this information at trial."

Plaintiff's Response and Defendant's Request for Confirmation: "An answer to an interrogatory must be responsive and complete in itself and should not refer to the documents." Meyer v. King, 1995 Mass. Super. LEXIS 13, 8 (1995). However, by confining her answer to these interrogatories to "see the pleadings filed by counsel in this matter that explain the substance of the Plaintiff's legal claims," does Ms. Gass intend to confirm under the oath that the Plaintiff is unaware of any other facts, documents, or persons with knowledge that will support those claims? Please advise and confirm.

II. Plaintiff's Document Production and Document Responses.

Document Request No. 2: All Documents evidencing the names, street addresses, email addresses and telephone numbers of each of BHIA's "members."

Plaintiff's Response: Plaintiff agreed to produce the names and addresses of BHIA's Board of Directors, but not its members.

Defendant's Objection to Response: For the same reasons stated above, to the extent a "membership roster" or other document that contains the names and addresses of all BHIA members exists, it must be produced.

Document Request No. 3: All Documents concerning communications between or among the Plaintiff and any of its members (as defined above) concerning the Proposed Project

Plaintiff's Response: BHIA agreed to produce responsive, non-privileged, non-work product documents within its custody or control.

Defendant's Objection to Response: Although BHIA agreed to produce communications between members, you did not produce any such documents in your production, and you did not provide any sort of privilege log to identify documents not produced and the nature of the privilege. For the reasons previously stated, communications among the membership with respect to Upton's Project are relevant, discoverable and must be produced.

Document Request No. 6: All Documents that evidence, identify or refer to the substance of any public statements made by the Plaintiff, its representatives, agents or members with respect to the Proposed Project

Plaintiff's Response: BHIA agreed to produce responsive, non-privileged, non-work product documents within its custody or control.

Defendant's Objection to Response: Since you have not identified which document request each document produced is responsive to, the Defendant is unclear if the Plaintiff intended to, and did, produce documents evidencing the public statements of its agents and representatives. The Plaintiff did produce numerous documents evidencing correspondence to the City of Boston from other third parties, but none from, for instance, Board members other than Ms. Gass. Please confirm that you have produced all documents in your custody that evidence public statements of BHIA's agents and representatives.

Document Request No. 8: Any and all Documents that evidence your Damages, if any.

Plaintiff's Response: Following a lengthy, non-responsive exposition concerning "inchoate" damages and "diminution of civic involvement," among other things, BHIA agreed to produce responsive, non-privileged, non-work product documents within its custody or control.

Defendant's Objection to Response: Since you did not identify which document request each document produced is responsive to, the Defendant is unclear if the Plaintiff intended to, and did, produce documents evidencing its damages. We find none.

Document Request No. 9: All Documents concerning the nature of the harm you claim will result to BHIA's property interests as a result of the Proposed Project.

Plaintiff's Response: See the Plaintiff's Response to Request Number 8.

Defendant's Objection to Response: Since you have not identified which document request each document produced is responsive to, the Defendant is unclear if the Plaintiff intended to, and did, produce documents evidencing the nature of the harm to BHIA's property interests. We find none.

Finally, in the documents you did produce, you included correspondence between the DCR and Senator Rush/Representative Coppinger referencing the controversy stated in your Complaint concerning the purported "violation" of a deed restriction. Within that correspondence there is a "report" of DCR to the Chairmen of the House and Senate Ways and Means Committees pursuant to section 78 of Chapter 209 of the Acts of 2016, which directs the Department of Conservation and Recreation to "conduct a study of a certain parcel of land that was conveyed pursuant to chapter 851 of the acts of 1977 to ensure that the current use of the land complies with the terms of said chapter 851 and the terms of the conveyance executed pursuant to said chapter 851 and shall issue a report on its findings to the senate and house committees on ways and means not later than July 1, 2019." Your document production did not include any correspondence between you (BHIA) and either DCR or legislators Coppinger or Rush concerning these issues. Please advise and confirm if the BHIA has produced all documents concerning its involvement (as represented by its officers and directors or through its counsel) in the matter of deed restrictions on the Clay Chevrolet parcel, and if not, please provide a privilege log for those documents.

Pursuant to Land Court Rules 6 and 7, the Defendant hereby requests that the Plaintiff supplement its discovery responses to address the deficiencies identified above and to schedule a discovery dispute teleconference in an attempt to narrow the issues in dispute.

Please provide us with three dates/times in the next 10 days at which you are available to review these matters so that our conference can be efficient and productive. We will be as flexible as we can to accommodate you.

Thank you for your attention in this matter.

Very truly yours,

/s/ Ryan M. Gazda

Ryan M. Gazda

cc: Jolie Main, Esq.

Exhibit “B”



June 6, 2019

Honorable Michael J. Rodrigues, Chair
Senate Committee on Ways and Means
State House, Room 212
24 Beacon Street
Boston, MA 02133

Honorable Aaron Michlewitz, Chair
House Committee on Ways and Means
State House, Room 243
24 Beacon Street
Boston, MA 02133

Re: Section 78 of Chapter 209 of the Acts of 2018

Dear Chairman Rodrigues and Chairman Michlewitz:

The Department of Conservation and Recreation (“DCR”) is submitting this letter to fulfill the requirements of section 78 of Chapter 209 of the Acts of 2018. Section 78 states:

Notwithstanding any general or special law to the contrary, the department of conservation and recreation shall conduct a study of a certain parcel of land that was conveyed pursuant to chapter 851 of the acts of 1977 to ensure that the current use of the land complies with the terms of said chapter 851 and the terms of the conveyance executed pursuant to said chapter 851 and shall issue a report on its findings to the senate and house committees on ways and means not later than July 1, 2019.

As discussed below, from the information available, the use of the land conveyed pursuant to Chapter 851 of the Acts of 1977 (“Chapter 851”) appears to be in compliance with the terms of Chapter 851 and the terms of the conveyance executed pursuant to Chapter 851.

Chapter 851 directed the Metropolitan District Commission (“MDC”), a predecessor agency of DCR, to sell a parcel of land on the West Roxbury Parkway in the West Roxbury section of the City of Boston to Clay Chevrolet, Inc. The parcel of land, containing approximately 6,925 square feet, is described in Chapter 851 with reference to its metes and bounds and as shown on a plan, and that plan is on file in the Suffolk District Registry of Deeds (the “Registry”) in Book 9096, Page 274 (the plan, as recorded, hereinafter the “Plan” and the 6,925± square foot parcel hereinafter the “Parcel”). A copy of both Chapter 851 and the Plan are attached. The Assessing Department of the City of Boston identifies the Parcel as parcel 2001593005. Chapter 851

COMMONWEALTH OF MASSACHUSETTS · EXECUTIVE OFFICE OF ENERGY & ENVIRONMENTAL AFFAIRS

Department of Conservation and Recreation
251 Causeway Street, Suite 600
Boston MA 02114-2119
617-626-1250 617-626-1351 Fax
www.mass.gov/orgs/department-of-conservation-recreation



Charles D. Baker
Governor

Karyn E. Polito
Lt. Governor

Kathleen A. Theoharides, Secretary,
Executive Office of Energy & Environmental Affairs

Leo Roy, Commissioner
Department of Conservation & Recreation

neither contains limitations, conditions or restrictions on the use of the land or its subsequent conveyance nor specifies for the Commonwealth any right of reversion or entry that would attach to the conveyance of the Parcel. Prior to the enactment of Chapter 851, the Parcel, which at one time was part of the West Roxbury Parkway layout at its intersection with Belgrade Avenue, had been leased by the MDC to Clay Chevrolet, Inc. from at least as early as 1953. That lease had terminated prior to the conveyance of the Parcel.

As required by Chapter 851, the Commonwealth of Massachusetts, acting by and through the MDC, conveyed the Parcel to Clay Chevrolet, Inc. by a deed dated September 7, 1978 and recorded in the Registry in Book 9096, Page 274 (the "MDC Deed"). A copy of the MDC Deed is attached. Unlike Chapter 851, which contained no conditions or restrictions on the use of the land, the MDC Deed included 6 conditions and restrictions for the benefit of the remaining, adjacent land of the MDC. These conditions and restrictions that apply to the Parcel are as follows:

1. That all signs shall be removed from the roof of the existing building and that no new signs shall be erected on the roof of said existing building or the roof of any other building which may be constructed in the future without [MDC] approval.
2. That the new sign will be attached to the existing building facing the Parkway, and it will not exceed twenty-five (25) feet in length and two and one-half (2½) feet in height.
3. That said sign will read only "HOWARD CHEVROLET."
4. That additional tree planting, landscaping, fencing, etc. within the granted premises shall be subject to the approval of the [MDC].
5. That said premises are conveyed subject to the condition that if at any time the premises shall cease to be used for parking purposes, then, and in that event, said Commonwealth of Massachusetts shall enter upon said premises and repossess itself as of its former estate therein and said premises shall revert and revest in the Commonwealth of Massachusetts.
6. That no new building or structures shall be constructed or maintained within the twenty (20) building restriction as shown the [plan on file at the Registry in Book 9096, Page 274]; and that no buildings or structures will hereinafter be erected or maintained on said premises without prior approval of the [MDC], excepting the lighting structures as approved by the [MDC].

In the MDC Deed, the MDC also excepted and reserved unto the MDC "the perpetual right and easement to enter upon said land for the purpose of sloping, embanking, filling and maintaining its remaining land appurtenant to West Roxbury Parkway."

The conditions and restrictions in the MDC Deed would be enforced now by DCR, as the successor to the MDC. Any proven violation of condition/restriction number 5 (i.e., if the property ceases to be used for parking purposes) would permit the Commonwealth to file an action in the Land Court and seek to recover title to the Parcel. While the Commonwealth could not seek recovery of the Parcel for violations of the other conditions/restrictions stated in the MDC Deed, the Commonwealth could file an action seeking an order that the owner bring the Parcel back into compliance with the MDC Deed.

Clay Chevrolet, Inc. subsequently conveyed the Parcel to Howard Chevrolet, Inc. by a deed dated July 2, 1981 and recorded at the Registry in Book 9799, Page 288. A copy of that deed is attached. While DCR did not contract out to complete a full title examination of the Parcel, DCR performed a records search online at the Registry of Deeds and did not identify any further conveyances of the Parcel.

DCR has no role in the activities and uses that occur on the Parcel, except for addressing compliance with the above-referenced restrictions and conditions and also, if necessary, exercising the stated easement rights retained in the MDC Deed for the benefit of West Roxbury Parkway. The Assessing Department records of the City of Boston presently classify the Parcel as "commercial land" with a classification code of "337 (commercial property/parking lot). DCR understands that the Parcel is presently used for parking vehicles or is otherwise left vacant, and that Parcel is not put to any use other than parking vehicles. Further, no building is located on the Parcel within the 20-foot building restriction line as stated in the MDC Deed and as shown on the Plan. As such, the present use of the Parcel appears to comply with the restrictions and conditions contained in the MDC Deed. Accordingly, in accordance with the directive in Section 78 of Chapter 209 of the Acts of 2018, DCR believes at this time that the current use of the Parcel complies with Chapter 851 and the terms of the conveyance in the MDC Deed executed pursuant to Chapter 851.

I trust that this letter responds sufficiently to the provisions of Section 78 of Chapter 209 of the Acts of 2018. If you have any questions or require further assistance, please contact Sean Pierce, DCR's Director of Governmental Affairs, at 617-626-4991 or Sean.Pierce@mass.gov. Thank you.

Sincerely yours,



Leo P. Roy
Commissioner

Attachments:

- I. Chapter 851 of the Acts of 1977

2. Plan filed with Book 9096, 274
3. MDC Deed recorded in Book 9096, 274
4. Clay Chevrolet deed to Howard Chevrolet recorded in Book 9799, Page 288

cc: Senator Michael Rush
Representative Edward Coppinger
Sean Pierce, Director of Governmental Affairs, DCR
Karen L. Nober, General Counsel, DCR
Thomas J. LaRosa, Deputy General Counsel, DCR

Chap. 849. AN ACT AUTHORIZING THE PAYMENT OF A SUM NECESSARY TO CORRECT AN ERROR IN THE SCHOOL AID DISTRIBUTION TO THE CITY OF BROCKTON FOR THE YEAR NINETEEN HUNDRED AND SEVENTY-FOUR.

Be it enacted, etc., as follows:

Notwithstanding the provisions of section eighteen A of chapter fifty-eight of the General Laws to the contrary, the commissioner of corporations and taxation is hereby directed to certify to the state treasurer the amounts necessary to correct the error which occurred in the general school aid formula for the city of Brockton for the calendar year ending December thirty-first, nineteen hundred and seventy-four. Said treasurer shall pay the amounts so certified to said city during the fiscal year ending June thirtieth, nineteen hundred and seventy-nine, from the amount appropriated for the distributions required by said section eighteen A.

Approved December 23, 1977.

Chap. 850. AN ACT AUTHORIZING THE DEDHAM, MILTON, NATICK, WELLESLEY REGIONAL VOCATIONAL TECHNICAL SCHOOL DISTRICT TO LEASE EQUIPMENT, LAND AND BUILDINGS FOR EDUCATIONAL PURPOSES FOR CERTAIN PERIODS OF TIME.

Be it enacted, etc., as follows:

The Dedham, Milton, Natick, Wellesley regional vocational technical school district is hereby authorized to lease, or lease with an option to purchase, equipment for educational purposes for periods not exceeding ten years; and to lease land and buildings or portions of buildings for educational purposes for periods not exceeding ten years. Said lease of land and buildings may contain provisions for the extension of such lease for two additional terms not in excess of five years each, exercisable at the option of the Dedham, Milton, Natick, Wellesley regional vocational technical school district committee.

Approved December 23, 1977.

Chap. 851. AN ACT DIRECTING THE METROPOLITAN DISTRICT COMMISSION TO SELL AND CONVEY A CERTAIN PARCEL OF LAND IN THE CITY OF BOSTON TO CLAY CHEVROLET, INC.

Be it enacted, etc., as follows:

The metropolitan district commission is hereby authorized and directed to sell and convey, in the name and on behalf of the

commonwealth, to Clay Chevrolet, Inc., a corporation duly incorporated under the laws of the state of Delaware and doing business in the commonwealth, by a quit claim deed approved as to its form by the attorney general, for such consideration as may be acceptable to said commission, a certain parcel of land under the control of said commission located on the West Roxbury parkway in the city of Boston, presently used under a lease agreement by Clay Chevrolet, Inc. Said parcel is shown on a plan entitled "Commonwealth of Massachusetts, Metropolitan District Commission, Parks Division, West Roxbury Parkway, Boston (West Roxbury District), Plan of Land to be Leased to Clay Chevrolet Inc., August 24, 1953, Benjamin W. Fink, Director of Park Engineering," being plan accession number 31819, a copy of which is on file with said commission, said land being more particularly bounded and described as follows:

Southerly by the northerly line of Belgrade Avenue, fifty-seven (57) feet more or less;

Westerly by land of the Commonwealth of Massachusetts, known as West Roxbury Parkway, one hundred twenty (120) feet more or less.

Northerly by the southerly side line of the location of the New York, New Haven and Hartford Railroad, fifty-seven (57) feet more or less; and

Easterly by land now or formerly of Clay Chevrolet, Inc., one hundred twenty-three (123) feet more or less; containing six thousand nine hundred twenty-five (6925) square feet more or less.

All proceeds from said conveyance shall be credited to the Metropolitan Parks Trust Fund as provided by section thirty-four of chapter ninety-two of the General Laws.

Approved December 23, 1977.

Chap. 852. AN ACT RELATIVE TO PAYROLL DEDUCTIONS FOR PUBLIC SCHOOL TEACHERS.

Be it enacted, etc., as follows:

Chapter 180 of the General Laws is hereby amended by inserting after section 17H the following section:-

Section 17I. A single deduction on payroll schedules shall be made from the salary of any school teacher in an amount which such teacher may specify in writing to the city, town or district school committee by which he is employed; provided, however, that no specific deduction shall be made for the payment of con-

9096 274

The Commonwealth of Massachusetts acting through its Metropolitan District Commission under the provisions of Chapter 851 of the Acts of 1977, for consideration paid in the sum of Three Thousand Dollars (\$3,000.00) and other non-monetary considerations, receipt of which is hereby acknowledged, grants to Clay Chevrolet, Inc., a corporation duly incorporated under the laws of the state of Delaware with an usual place of business at 361 Belgrade Avenue, West Roxbury in the County of Suffolk and Commonwealth of Massachusetts, with quitclaim covenants, the land situated in the West Roxbury District of the City of Boston in said county and Commonwealth and shown on a plan entitled "Commonwealth of Massachusetts, Metropolitan District Commission, Parks Division, West Roxbury Parkway - Boston, Plan of Land to be Conveyed to Clay Chevrolet, Inc. under Chapter 851 of Acts of 1977 * * * August 24, 1953, Revised August 28, 1978 to Conform to Registers of Deeds Rules and Regulations, Richard C. Zellen, Deputy Chief Construction Engineer," being plan accession number 31819-V.T., to be recorded herewith, said land being more particularly bounded and described as follows:

- SOUTHERLY by the northerly line of Belgrade Avenue, fifty-seven (57) feet more or less;
- WESTERLY by land of the Commonwealth of Massachusetts known as West Roxbury Parkway, one hundred twenty (120) feet more or less;
- NORTHERLY by the southerly side line of the location of the New York, New Haven and Hartford Railroad, fifty-seven (57) feet more or less; and
- EASTERLY by land now or formerly of Clay Chevrolet, Inc., one hundred twenty-three (123) feet more or less;

Containing six thousand nine hundred twenty-five (6,925) square feet more or less, as shown on the aforesaid plan.

Said premises are conveyed subject to the following conditions and restrictions for the benefit of the remaining land of the Grantor known as West Roxbury Parkway:

1. That all signs shall be removed from the roof of the existing building and that no new signs will be erected on the roof of said existing building or the roof of any other building which may be constructed in the future without Commission approval.
2. That the new sign will be attached to the existing building facing the Parkway, and it will not exceed twenty-five (25) feet in length and two and one-half (2½) feet in height.
3. That the said sign will read only "HOWARD CHEVROLET".
4. That additional tree planting, landscaping, fencing, etc. within the granted premises shall be subject to the approval of the Commission.
5. That said premises are conveyed subject to the condition that if at any time said premises shall cease to be used for parking purposes, then, and in that event, said Commonwealth of Massachusetts shall enter upon said premises

and repossess itself as of its former estate therein and said premises shall revert and revest in the Commonwealth of Massachusetts.

6. That no buildings or structures shall be constructed or maintained within the twenty (20) foot building restriction line as shown on the aforesaid plan, and that no buildings or structures will hereafter be erected or maintained on said premises without prior approval of the Commission, excepting the lighting structures as approved by the Commission.

The Grantor excepts and reserves unto itself the perpetual right and easement to enter upon said land for the purpose of sloping, embanking, filling and maintaining its remaining land appurtenant to said West Roxbury Parkway.

For Grantor's title see Order of Taking dated November 30, 1894 and recorded in Suffolk Registry of Deeds Book 2244, Page 113.

IN WITNESS WHEREOF the Commonwealth of Massachusetts has caused these presents to be executed in its name and behalf by a majority of its said Metropolitan District Commission, including the Commissioner, who do, therefore, hereunto set their hands and seals, without, however, incurring any personal liability by reason of the execution hereof or of anything herein contained, this

7th day of Sept. , 1978.

COMMONWEALTH OF MASSACHUSETTS

By: John F. Sneider Commissioner

Margaret D. Sawyer
Arthur B. Banks Associate

Donald J. ... Commissioners

Neil ...
being a majority of the
Metropolitan District Commission

RECORDED IN SUFFOLK COUNTY REGISTER OF DEEDS
1978 SEP 11 10 06 AM
CANCELED

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

September 7, 1978.

Then personally appeared the above named JOHN F. SNEDEKER, Commissioner as aforesaid, and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of the Commonwealth of Massachusetts,

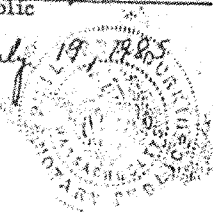
before me

Philip T. ...
Notary Public

My commission expires July 19, 1985

APPROVED AS TO FORM:

David ...
ATTORNEY GENERAL



9096 276

In Metropolitan District Commission,

Boston,

Sept 7, 1978.

VOIED: To convey to Clay Chevrolet, Inc. under the provisions of Chapter 851 of the Acts of 1977, a certain parcel of land situated in the West Roxbury District of Boston, County of Suffolk and Commonwealth of Massachusetts, containing six thousand nine hundred twenty-five (6,925) square feet more or less as shown on a plan entitled "Commonwealth of Massachusetts, Metropolitan District Commission, Parks Division, West Roxbury Parkway - Boston, Plan of Land to be Conveyed to Clay Chevrolet, Inc. Under Chapter 851 of Acts of 1977 * * * August 24, 1953, Revised August 28, 1978 to Conform to Registers of Deeds Rules and Regulations, Richard C. Zellen, Deputy Chief Construction Engineer," being plan accession number 31819-V.T., and to execute a deed accordingly.

A true copy.

ATTEST:

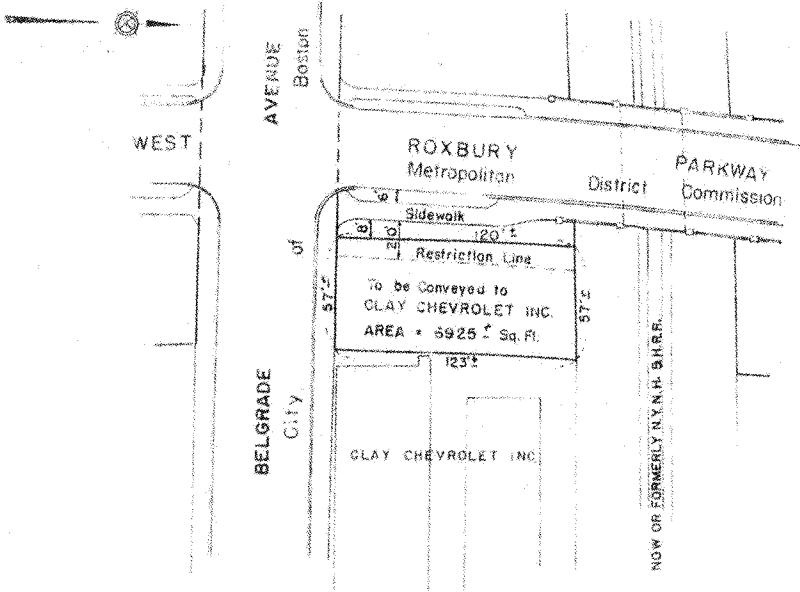
Joseph S. Moran
Secretary, Metropolitan District Commission

SEP 14 1978 AT 10 O'CLOCK & 48 A.M. NINS. REC'D. ENT'D. & EXAM. 902

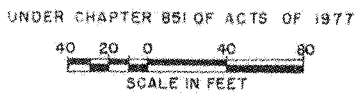
1953 COMMONWEALTH OF MASS.



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9096
274



COMMONWEALTH OF MASSACHUSETTS
METROPOLITAN DISTRICT COMMISSION
PARKS DIVISION
WEST ROXBURY PARKWAY- BOSTON
PLAN OF LAND TO BE CONVEYED TO CLAY CHEVROLET INC.



AUGUST 24, 1953
REVISED AUGUST 28, 1978
TO CONFORM TO REGISTERS OF DEEDS RULES AND REGULATIONS

I certify that this plan has been prepared in conformity with the rules and regulations of the Registers of Deeds of the Commonwealth of Massachusetts.

[Signature]
DEPUTY CHIEF CONSTRUCTION ENGINEER

DRAWN BY *[Signature]*
CHECKED BY *[Signature]*

ACC. NO. 318-19

9799 288

197 457
7/02/91 9.08 11

Clay Chevrolet, Inc.
a corporation duly established under the laws of Delaware
and having its usual place of business at 361 Belgrade Avenue, West Roxbury,
Suffolk County, Massachusetts

for consideration paid, and in full consideration of Three Thousand (\$3,000.00) Dollars
grants to Howard Chevrolet, Inc.

of with quitclaim covenants

the land situate in the West Roxbury District of the City of Boston
in said county and Commonwealth and shown on a plan entitled

(Description and encumbrances, if any)

"Commonwealth of Massachusetts, Metropolitan District Commission,
Parks Division, West Roxbury Parkway - Boston, Plan of Land to be
Conveyed to Clay Chevrolet, Inc. Under Chapter 851 of Acts of 1977
***August 24, 1953, Revised August 28, 1978 to Conform to Registers
of Deeds Rules and Regulations, Richard C. Zellen, Deputy Chief
Construction Engineer," being plan accession number 31819-V.T., to
be recorded herewith, said land being more particularly bounded and
described as follows:

Grantor - 361 Belgrade Ave, West Roxbury
02451

- SOUTHERLY by the northerly line of Belgrade Avenue, fifty-seven (57) feet more or less;
- WESTERLY by land of the Commonwealth of Massachusetts known as West Roxbury Parkway, one hundred twenty (120) feet more or less;
- NORTHERLY by the southerly side line of the location of the New York, New Haven and Hartford Railroad, fifty-seven (57) feet more or less; and
- EASTERLY by land now or formerly of Clay Chevrolet, Inc., one hundred twenty-three (123) feet more or less;

Containing six thousand nine hundred twenty-five (6,925) square feet more or less, as shown on the aforesaid plan.

Said premises are conveyed subject to the following conditions and restrictions for the benefit of the remaining land of the Grantor known as West Roxbury Parkway:

1. That all signs shall be removed from the roof of the existing building and that no new signs will be erected on the roof of said existing building or the roof of any other building which may be constructed in the future without Commission approval.
2. That the new sign will be attached to the existing building facing the Parkway, and it will not exceed twenty-five (25) feet in length and two and one half (2-1/2) feet in height.
3. That the said sign will read only "HOWARD CHEVROLET".
4. That additional tree planting, landscaping, fencing, etc. within the granted premises shall be subject to the approval of the Commission.
5. That said premises are conveyed subject to the condition that if at any time said premises shall cease to be used for parking purposes, then, and in that event, said Commonwealth of Massachusetts shall enter upon said premises and repossess itself as of its former estate therein and said premises shall revert and revest in the Commonwealth of Massachusetts.

COMMONWEALTH OF MASSACHUSETTS
DEEDS & EXCISE
RECORDED
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6. That no buildings or structures shall be constructed or maintained within the twenty (20) foot building restriction line as shown on the aforesaid plan, and that no buildings or structures will hereafter be erected or maintained on said premises without prior approval of the Commission, excepting the lighting structures as approved by the Commission.

The Grantor excepts and reserves unto itself the perpetual right and easement to enter upon said land for the purpose of sloping, embanking, filling and maintaining its remaining land appurtenant to said West Roxbury Parkway.

Hereby conveying same premises conveyed by deed of the Commonwealth of Massachusetts acting through its Metropolitan District Commission to Clay Chevrolet, Inc., dated September 7, 1978 and recorded with Suffolk Registry of Deeds, Book 9096, Page 274.

In witness whereof, the said Clay Chevrolet, Inc.

has caused its corporate seal to be hereto affixed and these presents to be signed, acknowledged and delivered in its name and behalf by Clarence B. Clay, its President and Frances M. Clay, its Treasurer hereto duly authorized, this 2nd day of July in the year one thousand nine hundred and eighty-one

Signed and sealed in presence of

Stephen G. [Signature]

CLAY CHEVROLET, INC.
Clarence B. Clay
by Clarence B. Clay, President
Frances M. Clay
Frances M. Clay, Treasurer

The Commonwealth of Massachusetts

Suffolk ss. July 2 19 81

Then personally appeared the above named Clarence B. Clay, President and acknowledged the foregoing instrument to be the free act and deed of the Clay Chevrolet, Inc. before me

J.H. [Signature]
Notary Public—Justice of the Peace

My commission expires 1/28 19 84



Exhibit “C”

Chapter 851.

THE COMMONWEALTH OF MASSACHUSETTS

In the Year One Thousand Nine Hundred and Seventy-seven

AN ACT

DIRECTING THE METROPOLITAN DISTRICT COMMISSION TO
SELL AND CONVEY A CERTAIN PARCEL OF LAND IN THE CITY OF BOSTON TO CLAY
CHEVROLET, INC.

Be it enacted by the Senate and House of Representatives in General Court
assembled, and by the authority of the same, as follows:

The metropolitan district commission is hereby authorized and directed to sell and convey, in the name and on behalf of the commonwealth, to Clay Chevrolet, Inc., a corporation duly incorporated under the laws of the state of Delaware and doing business in the commonwealth, by a quit claim deed approved as to its form by the attorney general, for such consideration as may be acceptable to said commission, a certain parcel of land under the control of said commission located on the West Roxbury parkway in the city of Boston, presently used under a lease agreement by Clay Chevrolet, Inc. Said parcel is shown on a plan entitled "Commonwealth of Massachusetts, Metropolitan District Commission, Parks Division, West Roxbury Parkway, Boston (West Roxbury District), Plan of Land to be Leased to Clay Chevrolet Inc., August 24, 1953, Benjamin W. Fink, Director of Park Engineering," being plan accession number 31819, a copy of which is on file with said commission, said land being more particularly bounded and described as follows:

Southerly by the northerly line of Belgrade Avenue, fifty-seven (57) feet more or less;

Westerly by land of the Commonwealth of Massachusetts, known as West Roxbury Parkway, one hundred twenty (120) feet more or less.

All proceeds from said conveyance shall be credited to the Metropolitan Parks Trust Fund as provided by section thirty-four of chapter ninety-two of the General Laws.

House of Representatives, December 8, 1977.

Passed to be enacted, *Thomas W. McLee*, Speaker.

In Senate, December 12, 1977.

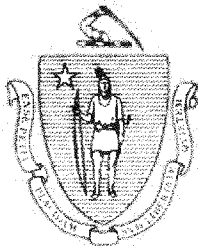
Passed to be enacted, *Kevin B. Stuntz* President.

December 23, 1977.

Approved,

Richard Phillips Governor.

Exhibit “D”



COMMONWEALTH OF MASSACHUSETTS
THE GENERAL COURT
STATE HOUSE, BOSTON 02133-1053

June 20, 2019

Leo Roy, Commissioner
Massachusetts Department of Conservation and Recreation
251 Causeway St., Suite 600
Boston, MA 02114

Dear Commissioner Roy:

Thank you for providing the House and Senate Committees on Ways and Means the letter dated June 6, 2019, fulfilling the requirements of Section 78 of Chapter 209 of the Acts of 2018. As legislators representing the City of Boston, and more specifically the West Roxbury section of the City of Boston, we would like to elaborate on this issue's history and context.

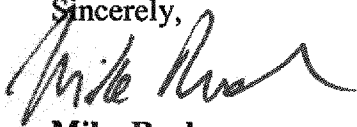
The legislature passed Chapter 851 of the Acts of 1977 under unique circumstances. A legislator who did not represent the area in question, who owned an auto dealership, and who had strong ties to auto dealerships across the state appeared to have spearheaded the passage of this legislation. This legislation specifically stated that the land shall be sold to Clay Chevrolet/Howard Chevrolet for the primary function of using the premises for "parking purposes" for the auto dealership.

The deed specifically states the Commonwealth of Massachusetts, acting by and through the Metropolitan District Commission (MDC), would convey this land subject to certain conditions and restrictions. It is our estimation there are currently violations to these six conditions and restrictions laid out in the deed. Namely, according to Paragraph 5 of the deed, "[s]aid premises are conveyed subject to the condition that if any time the premises shall cease to be used for **parking purposes (for a car dealership)**, then, and in that event, said Commonwealth of Massachusetts shall enter upon said premises and repossess itself as of its former estate therein and said premises shall revert and revest in the Commonwealth of Massachusetts." *Suffolk County Registry of Deeds*, Book 9096, Pages 274-275. (Emphasis added.) Moreover, Paragraph 3 states, "[t]hat said sign will read only 'HOWARD CHEVROLET'", is in violation of the deed restriction because the sign on the property currently reads "Clay".

As such, we respectfully request the Department of Conservation and Recreation reclaim the property in question based on the provisions of Chapter 851 of the Acts of 1997 and the

requirements of the accompanied deed or through its powers granted in Chapter 79 of the General Laws. Through this repossession of the premises, this land may be used as originally intended prior to the 1977 legislation.

Sincerely,



Mike Rush
State Senator
Norfolk & Suffolk District



Edward Coppinger
State Representative
10th Suffolk District



June 28, 2019

Senator Michael F. Rush
State House, Room 109-C
24 Beacon Street
Boston, MA 02133

Representative Edward F. Copping
State House, Room 26
24 Beacon Street
Boston, MA 02133

Dear Senator Rush and Representative Copping:

Thank you for your letter dated June 20, 2019, addressing the Department of Conservation and Recreation's ("DCR") June 6, 2019 letter to the House and Senate Committees on Ways and Means, as well as your interpretation of Chapter 851 of the Acts of 1977 ("Chapter 851") and the accompanying deed conveying the parcel of land in question on the West Roxbury Parkway to Clay Chevrolet, Inc.

Respectfully, DCR disagrees with your reading of the statute and the deed, as well as your claim that DCR can reclaim the property in question. As an initial matter, you wrote that Chapter 851 "specifically stated that the land shall be sold to Clay Chevrolet/Howard Chevrolet for the primary function of using the premises for 'parking purposes' for the auto dealership." Chapter 851 directed the Metropolitan District Commission, a predecessor agency of DCR, to sell the identified parcel of land on the West Roxbury Parkway to Clay Chevrolet, Inc. The statute does not contain any language stating that the land sold would be used for parking purposes for an auto dealership. Indeed, Chapter 851 contains no limitations, conditions or restrictions whatsoever on the use of the land or its subsequent conveyance. Nor does the statute provide the Commonwealth any right of reversion that would attach to the conveyance of the parcel.

DCR agrees that the deed conveying this land to Clay Chevrolet contains six conditions and restrictions. However, the language of condition number 5 in the deed requiring that the property be used for parking

COMMONWEALTH OF MASSACHUSETTS - EXECUTIVE OFFICE OF ENERGY & ENVIRONMENTAL AFFAIRS

Department of Conservation and Recreation
251 Causeway Street, Suite 900
Boston MA 02114-2119
Phone: 617-626-1250 | Fax: 617-626-1351
www.mass.gov/dcr



Charles D. Baker
Governor

Karyn E. Polito
Lt. Governor

Matthew A. Beaton, Secretary
Executive Office of Energy & Environmental Affairs

Leo P. Roy, Commissioner
Department of Conservation & Recreation


purposes does not specify that the parking be *solely for a car dealership*. Condition number 5 states "[t]hat said premises are conveyed subject to the condition that if at any time said premises shall cease to be used for parking purposes, then, and in that event, said Commonwealth of Massachusetts shall enter upon said premises and repossess itself as of its former estate therein and said premises shall revert and revest in the Commonwealth of Massachusetts." See Suffolk County Registry of Deeds, Book 9096, Pages 274-275. Nothing in condition number 5—or the deed as a whole—requires that the property be used for parking purposes *only for a car dealership*.

If a violation of condition number 5 were proven, it would permit the Commonwealth to file an action in the Land Court and seek to recover title to the property. However, DCR understands the current use of the property is consistent with this condition—*i.e.*, it presently is being used for parking vehicles and no other purpose. Moreover, DCR understands that the intended future use of the property is also consistent with condition number 5.

In your letter you also state that the other five conditions and restrictions in the deed are currently being violated. However, the deed does not authorize the Commonwealth to seek to recover title to the property for violation of those conditions/restrictions. Therefore, compliance with those conditions is irrelevant to your request that DCR reclaim the property in question.

Based on the current (and future intended use) of the property in question, it is DCR's opinion that it has no legal right to seek to reclaim the parcel under either Chapter 851 of the Acts of 1977 or the terms and conditions of the deed.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Priscilla Geigis', written over a horizontal line.

Priscilla Geigis
Deputy Commissioner