

**environmental**

Turn waterfront development challenges into sales features: Know the law and think long term

dp Daniel Padien**Vanasse Hangen Brustlin**

The perks of owning waterfront property come with challenges: more permitting, site constraints, higher construction costs, and then there's all that unpredictable water... But rewards come to those who think long term and get creative about turning compliance points into tenant-attracting amenities that revitalize and maximize this investment.

When WinnDevelopment moved to transform a waterside East Boston parking lot into Clippership Wharf, a retail, office and residential complex, it first had to comply with one of the Commonwealth's oldest laws.

Adopted in 1866, Massachusetts General Law Chapter 91 mandates public access to the waterfront by land and water. It's based on a legal principle dating back nearly 350 years that holds that the air, the sea, and the shore belong to the public at large. Chapter 91 applies to development on most filled and flowed tidelands along the seacoast and inland waterways. Compliance can be complex, with requirements for building height, types of uses, open space requirements, and public amenities.

With some creative strategy, WinnDevelopment complied with Chapter 91 by integrating into the project artist spaces, restaurants, retail shops, an environmental education center, and a water taxi station, as well as an extensive network of open spaces and an extension of Boston's Harborwalk.

These features are also new market demands: Today's buyers pay a premium for settings that not only provide water views but are themselves vibrant waterfront destinations with proximity to services. The result: Improved property values, enhanced settings, more sales features, diverse income streams, and better relations with local communities.

Chapter 91: Know your boundaries

Administered by the Department of Environmental Protection (DEP) Waterways Program, Chapter 91 jurisdiction extends from the current mean high water line to the historic high water line where the waterfront existed before any man-made alterations such as filling. In areas where public ways separate historic filled tidelands from the current mean high water, such as Memorial Drive in Cambridge, D-

EP's jurisdiction is limited to the first 250 feet from mean high water.

A costly mistake made by developers new to Massachusetts is assuming that once a property has a license, it is authorized for any future development. However, a change in use of previously licensed fill also requires a new license: A historically authorized mill building will require a new Chapter 91 license, for example, if a mixed-use development is now proposed. Before investing in a conceptual design, it's critical to conduct a thorough research of the license history by investigating historic licenses at DEP, researching historic legislative acts, and conducting a thorough deed search.

DEP will soon release a map

delineating its presumption of the jurisdictional boundary. However, as DEP's own Web site on the topic notes, pinpointing historic boundaries is more "art than science." Owners of waterfront property are well served to confirm DEP's jurisdiction on their properties—since building within Chapter 91 jurisdiction can potentially add as much as a year to the pre-construction phase.

Putting some there there

Besides Chapter 91, other permits and laws that apply to coastal development include local zoning, Coastal Zone Management, Massachusetts Environmental Preservation Act, local Municipal Harbor Plans, historic preservation rules, Army Corps of Engineers,

and the Wetlands Protection Act. Compliance points for these regulations can double as amenities. That includes shoreline restoration, public walkways with close contact with the water, good connections with adjacent neighborhoods and downtown, commercial uses (such as ports and fishing), water fountains and benches, public bathrooms, signage, preserved historic features, and height limits on buildings. All are components of lively and pedestrian-scale settings for which buyers pay more.

Integrating your team of engineers, planners, architects and permitting consultants is your best chance to spot these opportunities to parlay compliance into sales features.

Developers are also finding cre-

ative ways of commingling the working waterfront—from fishing to port use

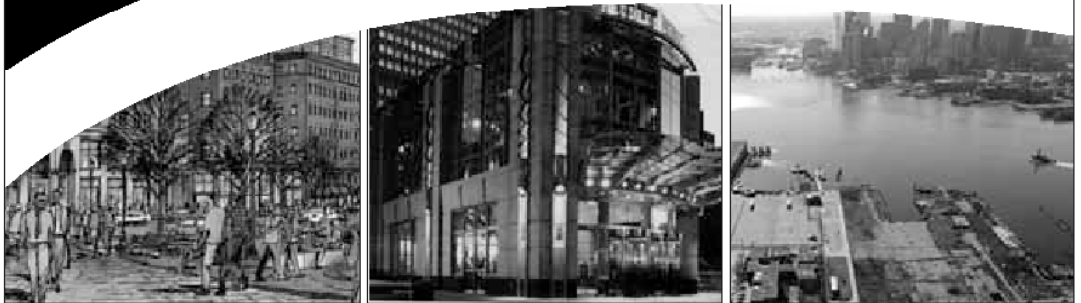
If "location, location, location" is the credo of real estate valuation, it must be remembered that "location" can be created. Buyers want street life, convenience, connection, and authenticity—as well as security and good value.

To make the most of developing your coastal investment and distinguishing it from others, know the law, know your boundary, and be strategic about inviting the public to your site.

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