

COMMERCIAL REAL ESTATE INSIGHT & NEWS

The Bowditch & Dewey Real Estate Blog

Appurtenant Railroad Land No Longer Impedes Development

BY DONNA M. TRUEX • SEPTEMBER 18, 2018

MGL c. 40, section 54A provides that a municipality cannot issue a building permit to build a structure on land formerly used as a railroad right-of-way or any property appurtenant thereto formerly used by any railroad company in the Commonwealth without first obtaining the consent of the secretary of the Massachusetts Department of Transportation ("MassDOT"). Thus, a developer of land falling into this category must first obtain MassDOT consent before a municipality will issue a building permit. The statute was intended to protect the integrity of former transportation corridors for potential future transportation and corridor uses. However, the application of the statute has created uncertainty, delay and expense in the development of lands abutting railroad right of ways since its inception in 1973. Building permits have been denied and projects delayed because they included land that was formerly owned by a railroad. Who knows if such land was actually *used* by a railroad company? What exactly is land "appurtenant thereto" anyway? In many cases it is almost impossible to definitively determine how land was formerly used, if at all, by a railroad. Therefore, as a rule, the broad and liberal interpretation has been that any land formerly owned by a railroad, or any company that operates any transportation similar to a railroad, such as street cars, is subject to the statute and the "appurtenant thereto formerly used" language was rendered superfluous.

Section 10 of the 2018 Economic Development Act (Chapter 228 of the Acts of 2018) removed the confusing language "property appurtenant thereto" from the statute and directed the MassDOT to establish guidelines, timeframes and a mechanism for governing the review process under the statute. Prior to passage of Section 10, such guidelines, timeframes and mechanisms did not exist and owners with questionable land were required to apply to MassDOT for permission to build on such land, attend a hearing and wait as long as necessary for a decision. These revisions should ultimately provide a project proponent with a means to quickly determine if the statutory restriction on construction on railroad land applies to its site without having to go through the full application and hearing process, saving valuable time and money. The Act further removes the vagaries of the over broad "property appurtenant thereto" language, representing a win for development in the Commonwealth.

©2026 Bowditch & Dewey LLP. All Rights Reserved.