

## LEGAL UPDATE PROVIDED AT SELECTBOARD MEETING 8-28-23 FOR PUBLIC RELEASE

The Town remains in litigation with the railroad in both federal and state court, and in the Surface Transportation Board (“STB”).

State Court: In late March the Massachusetts Appeals Court confirmed that settlement agreement between the Town and the railroad in the previous Land Court litigation, including the Town’s waiver of its Chapter 61 right of first refusal to purchase the forestland, was not effective. The Supreme Judicial Court denied the railroad’s request for review of that decision. The case is now back in the Land Court, and on October 13 that Court will hear argument on the Citizens’ motion to intervene in that case. Meanwhile, on the strength of the Appeals Court decision, the Town has filed its own motion to re-open its claims that it is entitled to exercise its right of first refusal over the property.

Federal Court: On March 31, the federal district court granted the railroad’s request for an injunction against the Town’s proposed eminent domain taking of the forestland. It did so based on plans previously submitted by the railroad that reflected it intended to use all of the property for a massive, 22 building transloading facility. Since then, in separate litigation in state court between the former CEO of the railroad and the railroad’s owner, the owner has admitted that these plans for development of the forestland are impractical and not buildable. The Town has now brought the railroad’s admission to the attention of the District Court and asked the District Court to reopen the case. If successful in doing so the Town will argue that the railroad improperly obtained an injunction against the Town’s proposed taking based on plans for a facility that cannot be built.

At the same time, the Town is pursuing an appeal in the United States Court of Appeals for the First Circuit, arguing that the District Court improperly granted the injunction for several reasons, including that it did not have jurisdiction over the case, that it failed to give proper attention to the fact that the railroad’s plans were not buildable, and that there is a serious question being addressed in state court about whether the railroad even owns the property.

STB: The federal judge who granted the injunction against the Town’s taking ordered the railroad to file a petition with the STB to determine the STB’s view on whether the Town’s proposed taking was barred by federal law. The railroad filed a petition that the taking was barred, and the Town has opposed it. The STB has not issued a ruling.