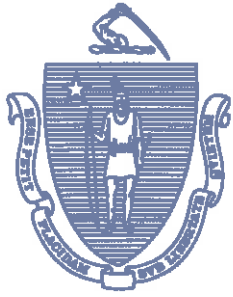


**Beyond Full
rent-\$750**

		<u>paid</u>	<u>date / ck#</u>	<u>comments</u>
FY total	8/1/2019	300.00	8/15/2019 - ck# 102	business opened 8/11/2019- partial payment
	9/1/2019	750.00	10/9/2019 - ck# 1342	
	10/1/2019	750.00	9/15/2019 - 106	
	11/1/2019	750.00	11/18/2019- ck# 113	
	12/1/2019	750.00	12/31/2019	
	1/1/2020	750.00	2/3/2020 - ck# 119	
	2/1/2020	750.00	3/2/2020	
	3/1/2020	375.00	4/21/2020 - ck# 123	at the April 13, 2020 BOS meeting, the Board voted to reduce the March rent to 1/2 and forgive April's rent payment
	4/1/2020	0.00		
5,362.50	5/1/2020	187.50	6/3/2020 - ck# 100	BOS partial payment decision
	6/1/2020	187.50	7/31/2020 - ck# 125	BOS partial payment decision
	7/1/2020	0.00		
	8/1/2020	187.50	9/1/2020 - ck# 126	BOS partial payment decision
	9/1/2020	187.50	10/6/2020 - ck# 127	BOS partial payment decision
	10/1/2020	187.50	11/6/2020 - ck# 130	BOS partial payment decision
	11/1/2020	187.50	11/24/2020 - ck# 132	BOS partial payment decision
	12/1/2020	0.00		BOS full rent forgiveness decision
	1/1/2021	187.50	12/3/2020 - ck# 134	waiting on BOS payment decision (partial or full)
	2/1/2021	562.50	3/1/2021 - ck# 175	BOS partial payment decision
	3/1/2021	750.00	4/1/2021 - ck# 176	
	4/1/2021	750.00	4/27/2021 - ck# 148	
	5/1/2021	750.00	5/7/2021 - ck# 152	
4,687.50	6/1/2021	750.00	6/20/2021 - ck# 163	
	7/1/2021	750.00	7/24/2021 - ck# 177	
	8/1/2021			
	9/1/2021			
	10/1/2021			
	11/1/2021			
	12/1/2021			
	1/1/2022			
	2/1/2022			
	3/1/2022			
	4/1/2022			
	5/1/2022			
	6/1/2022			



THE COMMONWEALTH OF MASSACHUSETTS
STATE RECLAMATION & MOSQUITO CONTROL BOARD
**CENTRAL MASSACHUSETTS
MOSQUITO CONTROL PROJECT**

111 Otis Street, Northborough, MA 01532 - 2414
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www.cmmcp.org



COMMISSION CHAIRMAN
RICHARD DAY

EXECUTIVE DIRECTOR
TIMOTHY D. DESCHAMPS

August 24, 2021

Town of Hopedale
Board of Health
Hopedale, MA 01747

Central Massachusetts Mosquito Control Project personnel will be in your community to respond to residents' concerns about mosquitoes in their area on the following dates in August and/or September:

August 30, September 7

All dates after September 9th are tentative, and all dates are subject to change due to weather conditions, mosquito populations, mosquito virus activity and/or special event spraying. This program will shut down when cool night time temperatures become predominant in the area. A detailed notice about our spray schedule is posted on the CMMCP phone system after 3:30 p.m. each day, and it is also listed on our website at <http://www.cmmcp.org>, click the "2019 Spray Schedule" button on the right.

Requests for service may be recorded by calling the CMMCP office at (508) 393-3055 between 7:00 AM - 3:30 PM, Monday through Friday, or logging on to <http://www.cmmcp.org>. Results of these requests may initiate an application of mosquito insecticides to defined, site-specific areas of town. Such an application may be accomplished by using truck mounted equipment depending on the extent of the application.

Per 333CMR13.03(1)(a): "Wide Area Applications of pesticides and mosquito control applications of pesticides approved by the State Reclamation and Mosquito Control Board shall not be made to private property which has been designated for exclusion from such application by a person living on or legally in control of said property." For more information please check: <http://www.cmmcp.org> and click the "No Spray Info" button on the right.

Please list this information in the local newspapers and on the local cable access channels if possible. Thank you for your assistance.

Sincerely,

Timothy D. Deschamps

Executive Director

cc: City/Town Clerk
Police Department

Christopher, Hays, Wojcik & Mavricos, LLP

STUART A. HAMMER
ARTHUR J. GIACOMARRA
DONALD C. KEAVANY, JR.
MARVIN S. SILVER
CHRISTOPHER R. MITCHELL
ANDREW P. DICENZO
JOHN E. SHIELDS

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Of Counsel
CHRISTOPHER CHRISTOPHER
DAVID A. WOJCIC
JOHN A. MAVRICOS

WILLIAM W. HAYS - Retired
WILLIAM C. PERRIN, JR. 1947-1997

August 24, 2021

VIA EMAIL ONLY

David E. Lurie, Esq.
Lurie Friedman, LLP
One McKinley Square
Boston, MA 02109
dlurie@luriefriedman.com

RE: *North Hopedale / West Street/ Carpenter Road*

Dear Dave:

Despite your repeated and continuing attempts to mischaracterize and expand the breadth of it, the Appeals Court's Order only enjoins the Town of Hopedale and its Select Board from making expenditures to acquire the subject land in North Hopedale. You know that. Indeed, this Order was in response to your specific, narrow and laser-focused request for PI against the Town of Hopedale and its Select Board, seeking an injunction enjoining the town and its Select Board from spending an amount of money to acquire the subject land that was less than/ different from the amount authorized at the October 2020 Special Town Meeting. The Order is explicitly and obviously limited to the potential "unauthorized expenditure of public funds" by the Select Board and temporarily enjoins the Select Board's use of such funds to acquire land from One Hundred Forty Realty Trust, the record owner of title to the land. The Order does not explicitly or implicitly restrict the Trust from doing anything. To the extent you may be successful with what remains of your ten-taxpayer lawsuit, you can succeed only in preventing the Town's acquisition of this land, or part of the land. Nothing in your complaint, and certainly nothing in the Appeals Court's Order, has the current or even potential future effect of prohibiting the Trust's current activities. Had you believed that it did, you would have moved previously for an injunction, rather than just now making empty threats of seeking a "contempt ruling."

Moreover, as you are aware, the Trust owns land known as 1 Carpenter Road, which is not, and was not, Chapter 61 land. The area that is being cleared right now is very limited and is being done solely to provide access to the Trust's Carpenter Road parcel.

Lastly, as you know, I have always viewed the lawsuit you filed on behalf of the ten taxpayers to be frivolous and an impermissible and unlawful attempt to undo a valid Settlement Agreement that was negotiated with the assistance of former Land Court Justice Leon Lombardi over a two-day mediation in January 2021. The Settlement Agreement arose from a 2020 lawsuit that was commenced by the Hopedale Select Board that alleged much of what your ten-

David E. Lurie, Esq.

August 24, 2021

Page 2 of 2

taxpayer lawsuit alleges, especially as it relates to Chapter 61 rights, and waiver and release of any such rights. Ten citizens – unhappy with a settlement that benefits the entire Hopedale community – have selfishly put their personal and political gripes above what is best for the town, which is unfortunate to say the least. My client has owned this land since October 2020 and directed me to act swiftly in response to the baseless lawsuit which you filed in March. To that end, I served you with a Motion for Judgment on the Pleadings on April 16, only 8 days after the Appeals Court Order entered and six weeks after the lawsuit was commenced. My client is desirous of bringing this litigation to an appropriate end as quickly as possible, and its actions have demonstrated that. However, in the meantime, please be advised that my client will not be bullied by ten residents of Hopedale and their lawyer into foregoing the exercise of its lawful rights as a property owner in Hopedale. That will not happen.

Very truly yours,

/s/ Donald C. Keavany, Jr.

DCK

cc: Andrew P. DiCenzo, Esq.
Brian Riley, Esq. (via email only)
Hopedale Water & Sewer Commission
Hopedale Conservation Commission
Client

LURIE FRIEDMAN LLP

ONE MCKINLEY SQUARE
BOSTON, MA 02109

DAVID E. LURIE

617-367-1970
dlurie@luriefriedman.com

August 24, 2021

BY EMAIL

Donald C. Keavany, Jr., Esq.
Christopher, Hays, Wojcik & Mavricos, LLP

Re: Reilly, et al. v. Town of Hopedale, et al. Worcester Superior Court Civil Action
No. 2185CV238D

Appeals Court Order Enjoining Settlement between Town of Hopedale
and Grafton & Upton Railroad – Appeals Court No. 2021-J-0111

Dear Don:

It has come to my attention that Grafton & Upton Railroad (“GURR”) used heavy equipment to cut and remove multiple mature trees yesterday at 364 West Street, destroying and denuding protected c. 61 Forestland that is the subject of the above-referenced litigation. GURR also used heavy equipment including front end loaders to remove and transport large boulders, substantially altering the grade and contours of the land. Attached to the email forwarding this letter are photographs and a video of this construction activity. We understand that this site work is continuing today.

This work apparently is taking place in or next to “Parcel B” depicted on Exhibit 1 to the Settlement Agreement between GURR and the Town of Hopedale in an area adjacent to the Mill River. As such, it is on Forestland which my clients in the above-referenced litigation maintain is subject to c. 61 rights of the Town and is not properly owned by GURR, and therefore may not be destroyed or denuded pending the resolution of the litigation.

As you know, we have already successfully obtained the attached Order from a Single Justice of the Appeals Court. The Single Justice stated that the February 9, 2021 Settlement Agreement “may well be unlawful” and issued the following injunction against its implementation:

Conclusion. I find that the plaintiffs have demonstrated a likelihood of success in showing that, pursuant to the statutes discussed herein, the select board lacks the authority to purchase the land described in the settlement agreement without an authorization from the town at town meeting. I further find that a preliminary injunction pending a determination on the merits would serve the public interest in preventing the unauthorized expenditure of public funds. Consequently, **the Hopedale Board of Selectmen is enjoined from issuing any bonds, making any expenditures, paying any costs, or transferring any property interests**

LURIE FRIEDMAN LLP

Donald Keavany, Esq.

August 24, 2021

Page 2

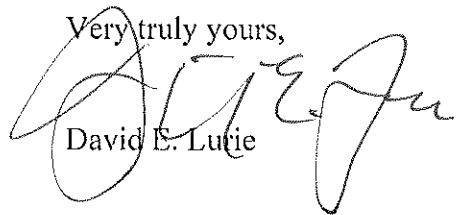
pursuant to the Settlement Agreement dated February 9, 2021, entered into with the Grafton and Upton Railroad, pending final judgement or further order of this court, or a single justice thereof, whichever is first to occur. (emphasis added)

This Order prohibits transfer of any c. 61 Forestland or release of the Town's rights in such land to GURR, and is binding on GURR as a party as well as the Board of Selectmen. Accordingly, GURR is bound as a matter of law to maintain the status quo regarding such land pending final resolution of the litigation.

Importantly, the parties' dispositive motions on the merits of the litigation are scheduled to be heard two weeks from now on September 9, 2021 in Worcester Superior Court. This hearing was moved up from September 16, 2021 in part due to your clients' desire to have this matter resolved sooner rather than later. It is essential that the status quo be maintained pending the September 9, 2021 hearing. GURR will not suffer any harm by waiting two weeks more to perform any site clearing activities on Forestland which we maintain belongs to the Town. On the other hand, the Forestland and the public will be irreparably harmed if site clearing work continues on protected Forestland which Town Meeting voted unanimously to preserve as parkland.

Please confirm by return email that GURR will cease and suspend all site clearing and related work at 64 West Street pending the September 9 hearing. My clients reserve all of their rights and remedies in this matter, including without limitation seeking additional court orders and/or contempt rulings to enjoin such work.

Very truly yours,



David E. Lurie

Encl.

cc: Clients
Brian Riley, Esq.
Hopedale Water & Sewer Commission
Hopedale Conservation Commission

Zimbra

jennifer.witaszek@jud.state.ma.us

Fwd: 2021-J-0111 - Notice of Docket Entry

From : Corinne L Gorman <corinne.gorman@jud.state.ma.us> Thu, Apr 08, 2021 01:04 PM
 Subject : Fwd: 2021-J-0111 - Notice of Docket Entry 1 attachment
 To : Jennifer M Witaszek
 <jennifer.witaszek@jud.state.ma.us>

And another..... thank you

----- Forwarded Message -----

From: AppealsCtClerk@appct.state.ma.us
 To: "Worcester clerksoffice"
 <Worcester.clerksoffice@jud.state.ma.us>
 Sent: Thursday, April 8, 2021 1:00:05 PM
 Subject: 2021-J-0111 - Notice of Docket Entry

FILED

APR 08 2021

ATTEST:

[Handwritten Signature]
 CLERK

- COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT CLERK'S OFFICE

April 8, 2021

RE: No. 2021-J-0111
 Lower Ct. No.: 2185CV0238

ELIZABETH REILLY & others [1]
 vs.
 TOWN OF HOPEDALE & others [2]

NOTICE OF DOCKET ENTRY

Please take note that on April 8, 2021, the following entry was made on the docket of the above-referenced case:

MEMORANDUM AND ORDER: This matter is before me by virtue of a petition, pursuant to G. L. c. 231, s. 118, first para., filed by the plaintiffs in Reilly, et al. v. Town of Hopedale, et al., Worcester Superior Court docket no. 2185CV0238. The plaintiffs are ten taxpayers residing in the Town of Hopedale (the town), and their suit, brought pursuant to G. L. c. 40, s. 53, seeks to enjoin the town, through its select board, from purchasing certain real property as an unauthorized expenditure for acquisition of land by purchase.

28

The plaintiffs sought an order from the Superior Court to enjoin the town and the defendant members of the town's select board from issuing any bonds, making any expenditures, paying any costs, including without limitation, for land or hydrogeological surveying, or transferring any property interests pursuant to a settlement agreement dated February 9, 2021, entered into with the Grafton and Upton Railroad ("the railroad") [3] pending resolution of the Superior Court action. The Superior Court judge denied the plaintiffs' motion and this petition followed. In this petition, the plaintiffs request the relief that was denied in the Superior Court. I issued a temporary stay pending resolution of the petition, and at my request, the defendants filed oppositions to the petition. The plaintiffs filed a reply to the opposition.

Background. The facts of this case are not contested. Although the legal significance of those facts is the subject of substantial dispute, a brief overview will suffice. The owner of certain forestland within the town took advantage of the advantageous tax treatment of that land offered by G. L. c. 61 thereby subjecting the property to the provisions of section 8 of that chapter. According to section 8, upon receipt of a bona fide offer to purchase forestland, the municipality wherein the land is located gains a statutory right of first refusal. In this case, the town sought to exercise that right. Whether the town effectively perfected that right and whether that right is preempted by federal law pertaining to railroads is the subject of on-going litigation in other fora.

Assuming that the town had or would effectively exercise its option to stand in place of the original purchaser, on October 24, 2020, the town meeting voted unanimously "to appropriate, the sum of One Million One Hundred Seventy-Five Thousand Dollars (\$1,175,000), to pay costs of acquiring certain property, consisting of 130.18 acres, more or less, located at 364 West Street . . . , and for the payment of all other costs incidental and related thereto, and that to meet this appropriation, the Treasurer, with the approval of the Board of Selectmen, is authorized to borrow said amount under and pursuant to G.L. c. 44, s.7(1) or pursuant to any other enabling authority, and to issue bonds or notes of the Town therefor."

In the same special town meeting, the town voted "to purchase, or take by eminent domain pursuant to Chapter 79 of the General Laws, for the purpose of public park land, the land located at 364 West Street which is not classified as forestland under Chapter 61 of the General Laws, consisting of 25.06 acres, more or less, . . . and in order to fund said acquisition, borrow . . . the sum of \$25,000, and to apply any discretionary grants, gifts, awards, or donations of money given to the Town for the purpose of land

conservation, and further to authorize the Board of Selectmen to take any and all actions and execute any and all documents to carry out the purposes of this article."

Thereafter, in the related Land Court proceedings wherein the town was attempting to assert its statutory right of first refusal, the town and the railroad were encouraged to mediate that dispute. As a result of that mediation, on February 9, 2021, the town, through its select board, and the railroad entered into a settlement agreement. The settlement provided for the town to, among other things, purchase 64 acres for \$587,000, rather than the full 155 acres of land for \$1,175,000. This litigation ensued.

Discussion. A single justice of this court has the authority to enter a preliminary injunction like the one requested by the plaintiffs, and that authority "does not depend on a determination that the trial court judge, in denying relief, made incorrect rulings of law or abused his [or her] discretion." *Jet-Line Servs., Inc. v. Bd. of Selectmen of Stoughton*, 25 Mass. App. Ct. 645, 646 (1988); G. L. c. 40, s. 53.

In a ten taxpayer case, such as this one, I am required to determine that the requested order promotes the public interest, or, alternatively, that the equitable relief will not adversely affect the public, and I must consider whether is a likelihood of statutory violations and how such statutory violations affect the public interest. See *Edwards v. Boston*, 408 Mass. 643, 647 (1990).

Because the Superior Court judge's decision turned on whether the plaintiffs had shown a likelihood of success in their claim that the settlement agreement was unlawful, I start with an analysis of the plaintiffs' chances. For the reasons stated herein, I conclude that the plaintiffs have shown a likelihood of success sufficient to consider the effect of an injunction on the public interest.

A town select board's general authority to acquire land is granted by statute. G.L. c. 40 s. 14. However, to exercise that general authority, the select board requires the vote of the town at town meeting. *Id.* The powers to purchase or take real property for public purposes set forth in section 14, though, are not the only methods by which a town may acquire real property. See G.L. c.60, s.s. 64 et seq., G.L. c.45, 14, and G.L. c.40, s.8C.

The plaintiffs argue that G. L. c. 61, s. 8 is another source of authority for a town to acquire real property outside the provisions of G. L. c. 40, s. 14. The defendants contend that completion of the purchase secured by the right of first refusal found in G. L. c. 68, s. 8 is implicitly dependent on the authority to purchase set forth in G. L. c. 40, s. 14. Neither

party has cited, nor am I aware of, any appellate cases deciding this issue. I need not and do not resolve this dispute.

Even if a town vote was necessary to authorize the board's decision to exercise the right of first refusal pursuant to G.L. c. 40, s. 14, the plaintiffs' argument that no such authorization occurred at the October 24, 2020 special town meeting is sufficiently meritorious to consider granting the requested injunction.

The motion at town meeting plainly does not contain an authorization to purchase but was merely an appropriation of funds for the purchase pursuant to G. L. c. 68, s. 8. Section 14 of chapter 40 requires both authorization and an appropriation. G.L. c. 40, s. 14. The absence of an explicit authorization is particularly noteworthy where, at the same town meeting, the motion to acquire the portion of the property at issue that was not forestland contained an explicit authorization. Because there were two motions to acquire land at the special town meeting and the motions utilized different language, it would be reasonable to conclude that the voters understood there to be a material difference in what they were voting in favor of. *CF Fernandes v. Attleboro Hous. Auth.*, 470 Mass. 117, 129 (2014) ("The omission of particular language from a statute is deemed deliberate where the Legislature included such omitted language in related or similar statutes").

Assuming, *arguendo*, that the defendants' position is correct, i.e. that G. L. c. 40, s. 14 authorization was required to complete the purchase pursuant to the right of first refusal, the result of the vote would have been ineffective to complete the purchase of the entirety of the forestland. Thus, it would not serve as an authorization to complete a purchase of a lesser amount thereof.

Assuming, *arguendo* and as the plaintiffs contend, that G.L. c. 61, s. 8 is an independent source of the select board's authority to purchase land in the absence of a town vote, the select board's authority would be limited by the language of that statute.

The plain language of that statute would not appear to authorize the select board to acquire any less than the entirety of the real property subject to the right of first refusal. "No sale of the land shall be consummated if the terms of the sale differ in any material way from the terms of the purchase and sale agreement which accompanied the bona fide offer to purchase as described in the notice of intent to sell except as provided in this section." G. L. c. 61, s. 8. Here, the significant reduction in both the acreage of land to be sold and the purchase price as set forth in the settlement agreement constitute a material change in the terms.

This interpretation of the source of the select board's authority would also distinguish this case from *Russell v. Town of Canton*, 361 Mass. 727 (1972), a case upon which the plaintiffs and the Superior Court judge relied. In *Russell*, the Supreme Judicial Court concluded that that the motion authorizing the select board to take all of an owners' land by eminent domain did not preclude selectmen from choosing and taking only part thereof. *Id.* at 732. In *Russell*, neither the town of Canton, nor the Supreme Judicial Court, were faced with the all-or-nothing nature of the right of first refusal found in G. L. c. 61, s. 8. *Id.* ("We express no opinion on the question whether a town's authorization for a taking may, by appropriate language, be expressly limited to or conditioned upon the taking of the entire parcel authorized to be taken, for this was not attempted in the case before us.") Consequently, while *Russell* may guide in this case, it is not controlling.

For these reasons, I find that the plaintiffs have demonstrated some likelihood of success in establishing that the town's purchase of the land, pursuant to the settlement agreement, would be a statutory violation. To be clear, I am not deciding this case on the merits; only that the plaintiffs have demonstrate some chance of success on their claim. See *Jet-Line Servs., Inc.*, 25 Mass. App. Ct. at 648 (single justice "not required to, and did not, decide the case or any of its pivotal issues on the merits"). Having so concluded, I move on to the effect an injunction would have on the public interest.

The public interest in protecting the public funds from unauthorized expenditure is self-evident. "The words of [G. L. c. 40, s. 53] and our cases interpreting it demonstrate that a violation of any law designed to prevent abuse of public funds is, by itself, sufficient harm to justify an injunction." *Edwards v. Boston*, 408 Mass. 643, 646 (1990). Section 14 of chapter 40, with its statutory requirement of a town vote before a purchase, is a statute designed to prevent the abuse of public funds. Thus, the plaintiffs have demonstrated that the requested injunction serves the public interest.

I am mindful of the defendants' arguments that the settlement agreement allows the public to salvage some of the benefits of its right of first refusal, and that permanently preventing the execution of that agreement could result in the town receiving none of the forestland. The settlement agreement may represent sound public policy, the correct litigation strategy in the Land Court, and a general benefit to the public and the town. Nevertheless, it may well be unlawful.

Nothing in this memorandum and order should be construed as preventing the town from conducting a town vote authorizing the select board to purchase any or all of the land at issue, which would render the transaction lawful.

Conclusion. I find that the plaintiffs have demonstrated a likelihood of success in showing that, pursuant to the statutes discussed herein, the select board lacks the authority to purchase the land described in the settlement agreement without an authorization from the town at town meeting. I further find that a preliminary injunction pending a determination on the merits would serve the public interest in preventing the unauthorized expenditure of public funds. Consequently, the Hopedale Board of Selectmen is enjoined from issuing any bonds, making any expenditures, paying any costs, or transferring any property interests pursuant to the Settlement Agreement dated February 9, 2021, entered into with the Grafton and Upton Railroad, pending final judgement or further order of this court, or a single justice thereof, whichever is first to occur. (Meade, J.).

*Notice/Attest/Frison, J.

Footnotes:

1. Carol J. Hall, Hillary Smith, David Smith, Megan Fleming, Stephanie A McCallum, Jason A. Beard, Amy Beard, Shannon W. Fleming, and Janice Doyle.
2. Louis J. Arcudi, III, Brian R. Keyes, Grafton & Upton Railroad Company, John Delli Prisculi, Michael R. Milanoski, and One Hundred Forty Realty Trust.
3. The land is owned by the trust defendant. However, the trust is controlled by the railroad. For convenience, I refer only to the railroad but include the trust where appropriate.

REGISTRATION FOR ELECTRONIC FILING. Every attorney with an appeal pending in the Appeals Court must have an account with eFileMA.com. Registration with eFileMA.com constitutes consent to receive electronic notification from the Appeals Court and e-service of documents. Self-represented litigants are encouraged, but not required, to register for electronic filing.

ELECTRONIC FILING. Attorneys must e-file all non-impounded documents. Impounded documents and submissions by self-represented litigants may be e-filed. No paper original or copy of any e-filed document is required. Additional information is located on our Electronic Filing page: <http://www.mass.gov/courts/court-info/appealscourt/efiling-appeals-faq-gen.html>

FILING OF CONFIDENTIAL OR IMPOUNDED INFORMATION. Any document containing confidential or impounded material must be filed in compliance with Mass. R. App. P. 16(d), 16(m), 18(a)(1)(A)(iv), 18(d), and 21.

Very truly yours,


The Clerk's Office

Dated: April 8, 2021

To: Harley Clarke Racer, EsquireDavid E. Lurie, EsquireBrian W. Riley, EsquireDonald C. Keavany, Jr., EsquireAndrew DiCenzo, EsquireWorcester Superior Court Dept.

If you have any questions, or wish to communicate with the Clerk's Office about this case, please contact the Clerk's Office at 617-725-8106. Thank you.

Worcester.clerksoffice mailing list
Worcester.clerksoffice@jud.state.ma.us
<http://mailman01.jud.state.ma.us/mailman/listinfo/worcester.clerksoffice>

 21J0111 P08 Memorandum and Order.pdf
38 KB

LURIE FRIEDMAN LLP

ONE MCKINLEY SQUARE
BOSTON, MA 02109

DAVID E. LURIE

617-367-1970
dlurie@luriefriedman.com

August 25, 2021

BY EMAIL

Donald C. Keavany, Jr., Esq.
Christopher, Hays, Wojcik & Mavricos, LLP

Re: Reilly, et al. v. Town of Hopedale, et al. Worcester Superior Court Civil Action
No. 2185CV238D

Appeals Court Order Enjoining Settlement between Town of Hopedale
and Grafton & Upton Railroad – Appeals Court No. 2021-J-0111

Dear Don:

In your August 24 letter, you confirm that GURR is cutting trees and excavating boulders at 364 West Street which is c. 61 land, despite the Appeals Court Order stating that the February 9, 2021 Settlement Agreement “may well be unlawful” and enjoining the Town from “transferring any property interests” pursuant to the Settlement Agreement including transferring any property interests under c. 61 to GURR.

You attempt to defend this site work by claiming that the One Hundred Forty Realty Trust owns a parcel known as 1 Carpenter Road that is not c. 61 land, and that “the area that is being cleared right now is very limited and is being done solely to provide access to the Trust’s Carpenter Road Parcel.”

I have attached Exhibit 1 to the Settlement Agreement, and have circled in black the apparent approximate location of the current tree cutting and other site work on c. 61 land. I have also circled in black what appears to be the parcel you are referring to as 1 Carpenter Road, an 18 acre landlocked parcel. See https://massgis.maps.arcgis.com/apps/OnePane/basicviewer/index.html?appid=47689963e7bb4007961676ad9fc56ae9&fbclid=IwAR2z-rLw4RVEgaW1mSKgD79EluP_brNevnKC3hBQoLxH2GchR7KCXt07SYo. This parcel appears to be owned by GURR, not the Trust. See <http://hopedale.patriotproperties.com/Summary.asp?AccountNumber=1714>. “Carpenter Road” is not a real road, but rather is a historic small path through the c. 61 Forestland from West Street. See <http://www.hope1842.com/hope1842/carpenterroad.html>.

It thus appears from your letter that it may be your clients’ intention and plan to cut an access road from West Street all the way across the entire width of the c. 61 Forestland, across GURR’s railroad tracks, to GURR’s 1 Carpenter Road parcel. I have drawn a line on Exhibit 1 attached hereto showing such a road.

LURIE FRIEDMAN LLP

Donald Keavany, Esq.
August 25, 2021
Page 2

If this is not your clients' intention and plan, please clarify and provide a full description of their development plan for the area, including any plan to provide the access to the 1 Carpenter Road parcel that you mention in your August 24 letter. Such a plan will allow the Court at the September 9, 2021 hearing and the public to understand the nature and extent of GURR's current and anticipated work on the c. 61 Forestland which Town Meeting unanimously voted to acquire and preserve as parkland. I note that Sections 1.b.vii and 1.c.vii of the Settlement Agreement require GURR and the Trust to "keep state and local authorities apprised of any development plans/intentions." I also note that the Finance Committee previously requested, but apparently did not receive from your clients, "maps indicating access roads and frontage" of the parcels associated with GURR and the Settlement Agreement. See https://www.hopedale-ma.gov/sites/g/files/vyhlf711/f/minutes/fin_com_meeting_minutes_2.10.21_1.pdf.

Very truly yours,

s/ David E. Lurie

David E. Lurie

Encl.

cc: Clients
Brian Riley, Esq.
Hopedale Water & Sewer Commission
Hopedale Conservation Commission

Christopher, Hays, Wojcik & Mavricos, LLP

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ARTHUR J. GIACOMARRA
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WILLIAM C. PERRIN, JR. 1947-1997

August 27, 2021

VIA EMAIL ONLY

David E. Lurie, Esq.
Harley Racer, Esq.
Lurie Friedman, LLP
One McKinley Square
Boston, MA 02109
dlurie@luriefriedman.com

RE: *Shwachman et al*
VS: *Grafton & Upton Railroad Company, et al*
Worcester Superior Court CA 1885CV01781D

Dear Dave:

Pursuant to Superior Court Rule 9A, I am enclosing / attaching a copy of the following:

- 1) Defendants, Grafton & Upton Railroad Company, Jon Delli Priscoli, Michael Milanoski and First Colony Group, LLC's Special Motion to Dismiss Plaintiffs' Second Amended Complaint Pursuant to G.L. c. 231, § 59H;
- 2) Memorandum of Law In Support of Defendants, Grafton & Upton Railroad Company, Jon Delli Priscoli, Michael Milanoski and First Colony Group, LLC's Special Motion to Dismiss Plaintiffs' Second Amended Complaint Pursuant to G.L. c. 231, § 59H;
- 3) Affidavit of John DeWaele; and
- 4) Affidavit of Jon Delli Priscoli.

Please serve me with any opposition /response to the enclosed within the time permitted by Superior Court Rule 9A. Thank you.

Very truly yours,

/s/ Andrew P. DiCenzo.

cc: Donald C. Keavany, Jr, Esq.
Client

Christopher, Hays, Wojcik & Mavricos, LLP

STUART A. HAMMER
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August 27, 2021

VIA EMAIL ONLY

David E. Lurie, Esq.
Lurie Friedman, LLP
One McKinley Square
Boston, MA 02109
dlurie@luriefriedman.com

RE: *North Hopedale / West Street/ Carpenter Road*

Dear Dave:

I apologize for the delay in responding to your letter of August 25, but I was busy finishing the motion to dismiss papers in the 2018 lawsuit you filed on behalf of Mr. Shwachman. With respect to your letter, your continued efforts to turn Justice Meade's limited April 8, 2020 Order enjoining the Town of Hopedale and its Select Board from making expenditures for the property at 364 West Street that differ from what was approved at the October 2020 Town Meeting into an all-encompassing injunction against the lawful settlement agreement entered into by the Town and my clients are laudable. However, just because you continue to purposely mis-state the limits of the April 8, 2020 Order (and the limits you put on your Motion for Preliminary Injunction) does not turn your fiction into reality. Please review again your March 4, 2021 Motion for Preliminary Injunction, including, but not limited to footnote 1, which states:

Plaintiffs bring additional claims in this action, including to restore the exercise of the Town's c. 61 first refusal option, transfer the wrongfully conveyed Forestland back to the Town from the Railroad and protect the Property as public parkland under Article 97 of the Amendments to the Massachusetts Constitution. Verified Complaint, Counts II and III. **This Motion is only as to Count I concerning imminent illegal expenditures by the Board under the Settlement Agreement.** Plaintiffs reserve all rights to pursue additional preliminary and permanent relief on their other claims, as necessary. [emphasis supplied].

It is crystalline clear that the entirety of the settlement agreement was not before Justice Frison or Justice Meade because you intentionally did not put it in front of Justice Frison or Justice Meade. You moved for an injunction on the only claim that you were able to move for an injunction – Count I – which was limited to alleged unlawful expenditures by the Select Board.

David E. Lurie, Esq.

August 27, 2021

Page 2 of 2

You sought no other injunctive relief, and you certainly sought no injunctive relief against the Trust and/or Grafton & Upton Railroad Company.

I am happy to see that you are recognizing the validity of the Settlement Agreement by your references to Sections 1.b.vii and 1.c.vii and my client's obligations under those provisions of the Settlement Agreement. Rest assured, my clients are aware of their obligations under the Settlement Agreement and they have acted in accordance with those obligations since the Agreement was executed in February 2021, and will continue to do so. The ten individuals who you represent are not entitled to direct reports from my clients with respect to work being performed on property they own.

I look forward to seeing you on September 9. Have a nice weekend.

Very truly yours,

/s/ Donald C. Keavany, Jr.

DCK

cc: Andrew P. DiCenzo, Esq.
Brian Riley, Esq. (via email only)
Hopedale Water & Sewer Commission
Hopedale Conservation Commission
Client









COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

PHILIP O. SHWACHMAN, MATTHEW W.)
SHWACHMAN, JUDITH L. SHWACHMAN,)
HOPEDALE PROPERTIES, LLC, and)
HOPEDALE INDUSTRIAL CENTER, LLC,)

Plaintiffs)

vs.)

TOWN OF HOPEDALE, TOWN OF HOPEDALE)
BOARD OF SELECTMEN, THOMAS A. WESLEY,)
LOUIS J. ARCUDI, III, BRIAN R. KEYES,)
STEVEN E. SETTE, GRAFTON & UPTON RAILROAD)
COMPANY, JON DELLI PRISCOLI, MICHAEL D.)
MILANOSKI, JASON G. MACDONALD, FIRST)
COLONY GROUP, LLC, DRAPER FALLS, LLC,)
LOBISSER BUILDING CORP., KEVIN LOBISSER,)
HOPEDALE HOUSING AUTHORITY,)
HOPEDALE DOWNTOWN REVITALIZATION)
COMMITTEE, HOPEDALE PLANNING BOARD,)
and DONALD W. HOWES,)

Defendants)

CASE NO. 1885-CV-01781D

AFFIDAVIT OF JOHN DeWAELE IN SUPPORT OF THE G&U DEFENDANTS'
SPECIAL MOTION TO DISMISS

I, John DeWaele, on oath depose and say as follows:

1. I am the General Manager of Grafton & Upton Railroad Company (“G&U”), and I submit this affidavit based upon my personal knowledge to respond to the false and misleading claims of the Plaintiffs in their Second Amended Complaint (“2AC”) regarding the condition of their properties which are the subject of this litigation.

2. Plaintiffs' 2AC is premised on their allegation that the G&U defendants and others conspired to "steal" their Draper Mill Property by falsely designating it as blighted, exaggerating the dilapidated nature of the property, and overestimating the anticipated costs to remediate and develop the property. Plaintiffs go to great lengths in both the 2AC and in both prior versions of their complaint to stress the improvements they made to these properties. They claim that at the time of the URP was being developed, i.e., 2017 and 2018, the condition of their properties had been "substantially improved" and that the portrayal of these properties in the URP as blighted was somehow "fraudulent." See, e.g., 2AC, ¶ 50 (Plaintiffs "substantially improved the condition of the property"); ¶ 72 (Plaintiffs' property was "greatly improved and remediated").

3. Plaintiffs' claims are utterly false and do not reflect the reality of the condition of their property during the relevant time period, or now. Anyone who drove through downtown Hopedale in 2017 or 2018 (including me, on countless occasions) would have noticed the blighted, dilapidated nature of these properties.

4. Plaintiffs' properties remained a blighted, dilapidated, and vacant eyesore for years after the time period relevant to the 2AC. For example, a December 1, 2020 article in the Worcester Business Journal described the planned total demolition of the mill buildings and stated in relevant part: "The dilapidated former Draper Corp. building, vacant for roughly four decades the center of the small town of Hopedale, has until the demolition plans announced in August hardly moved any closer to visions of a new development." See Exhibit A, attached.

5. A Hopedale Town News article dated October 27, 2020 attributed the following quote to a project manager at Worcester Business Development Corporation ("WBDC"), which partnered with Plaintiffs to redevelop the site: "Mr. Shwachman initiated that abatement and demolition activities of approximately 250,000 sf of the southern portion of the 1,000,000 sf

complex in August 2020. The rationale for undergoing these activities was due to significant structural and environmental conditions that were posing safety concerns. To date, the abatement of this section of the building has been completed and interior demolition has commenced.” See Exhibit B (emphasis added).

6. On its website, the WBDC reposted a December 2020 Milford Daily News Article in which WBDC’s President and CEO Craig Blais was quoted as saying, “We take on projects that are not ready for the conventional market, and I can assure you that the Draper Mills project is not ready for the conventional developer... It’s been proven time and time again over the years that it needs help...” See Exhibit C, attached.

7. Further, outside of this litigation, Plaintiffs acknowledged that their properties were blighted to the point of being a liability. Plaintiff Philip Shwachman was quoted in a December 2, 2020 Boston.com Real Estate article as saying: “we determined that, as much as we would have liked to save [the mill building], and look for a re-purposing option, the severe deterioration and safety concerns were more than we were comfortable with, and we felt that the liability was greater than any potential benefits.” See Exhibit D (emphasis added).

8. The same December 2, 2020 Boston.com article also quoted Philip Shwachman as stating: “We heard loud and clear from the town — I sat in on ... some of the eminent domain hearings and listened intently to the debate — and clearly heard the frustration of the many cycles that have been missed of the economy over the last 30, 40 years and having to live with the vacant mill being there...I fully understand the frustration ... It’s critical for the long-term success of the community that activity happen there.”

9. In July of this year, it was reported that the Plaintiffs’ mill building partially collapsed and sent debris onto the public streets below. See Exhibit E.

10. Currently, the Plaintiffs are proceeding with the total demolition of the mill buildings. Attached as Exhibit F are photographs that I took during the week of August 16, 2021. These photographs are a true and accurate depiction of the current state of Plaintiffs' properties. The mill buildings have been almost totally demolished, leaving vacant lots strewn with debris, building materials and trash.

11. Mr. Shwachman's out-of-court statements and admissions directly contradict the allegations of the 2AC. Mr. Shwachman alleged in 2021 that the properties had been substantially improved and remediated, even though he had decided in 2020 that the mill buildings needed to be totally demolished due to "severe deterioration," "safety concerns," and because they imposed liability "greater than any potential benefits." Given the above facts and admissions, it is outrageous and patently false for the Plaintiffs to submit to this Court that the defendants somehow committed "fraud" by accurately portraying Plaintiffs' properties as blighted, dilapidated, and in need of serious and costly additional remediation.

Signed under the penalty of perjury this 26TH day of August 2021.



John DeWaele

CERTIFICATE OF SERVICE

I, Andrew P. DiCenzo, Esq., hereby certify that on this 27th day of August, 2021, I caused a copy of the foregoing document to be emailed, pursuant to the Supreme Judicial Court Order concerning email service in cases under Mass. R. Civ. P. 5(b) dated March 30, 2020, to the following counsel of record:

David E. Lurie
Harley C. Racer
Lurie Friedman LLP
One McKinley Square
Boston, MA 02109

William M. Pezzoni
DAY PITNEY LLP
One International Place
Boston, MA 02110

/s/ Andrew P. DiCenzo

EXHIBIT A

December 1, 2020

Draper Mill in Hopedale to be 100% demolished



PHOTO | MATT WRIGHT

The former Draper mill site takes up a large chunk of of Hopedale's downtown. Here it is pictured before any of the original structure was demolished.

By Brad Kane

After announcing in August that a quarter of the 1.8-million-square-foot Draper Mill in Hopedale would be demolished to make the site more amenable to new development, the owner of the historic centerpiece of the town said Tuesday the facility now will be entirely torn down.

In its previous announcement, the mill's owner Hopedale Properties, which is run by principal Philip Shwachman, had hoped the majority of the original structure built in the mid-19th century could be repurposed with new development. After assessing the many environmental and safety deficiencies of the Draper Mill, Shwachman informed the Hopedale Board of Selectmen he plans to proceed with full demolition of the structures on Hopedale and Freedom streets, according to an announcement from the Worcester Business Development Corp., which is helping Shwachman fix up the property for potential development.

“The decision for Hopedale Properties to pursue complete demolition did not come easily,” said Craig Blais, president & CEO of the WBDC, in the announcement. “While it is difficult to reckon the loss of this historic gem, it is to the larger community's benefit to focus the time, effort and resources on future development opportunities within the site.”

The originally planned 25% demolition of the site has already been completed, and the demolition of the remainder of the structures on the 80-acre site is expected to be completed by June.



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The advertisement is a rectangular graphic with a blue border. At the top left is the logo for WWLC (Worcester Women's Leadership Conference), featuring the letters 'WWLC' in blue and orange, and a stylized figure. To the right is the logo for the Worcester Regional Chamber of Commerce, featuring a city skyline. Below these logos, the text reads: 'Presented by WORCESTER REGIONAL CHAMBER OF COMMERCE'. The main text in the center is: 'October 28th, 2021', '7:30 am - 4:00 pm', 'at the DCU Center', and '50 Foster St, Worcester, MA 01608'. Below this is a large orange button with the word 'REGISTER' in white. At the bottom, there are two sections: 'Presenting Sponsors' with logos for Hanover and UMass Memorial Health, and 'Keynote Sponsors' with logos for Massachusetts and DCU.

“We are optimistic for the future prospects of this key development site in the heart of Hopedale and very pleased with the enthusiastic support from local residents and community leaders alike,” said Shwachman, in the announcement.

The dilapidated former Draper Corp. building, vacant for roughly four decades the center of the small town of Hopedale, has until the demolition plans announced in August hardly moved any closer to visions of a new development. The Draper Corp. operated out of the site for about 130 years, making power looms as part of the textile industry, and was the largest employer in Hopedale.

The town filed a mixed-use plan for the site in 2018 to revitalize it at a cost estimated at \$50 million. The plan relied on nearly \$30 million in state and federal funding to be viable. The project, called Draper Falls, would have knocked down all but 73,000 square feet of the mill building.

The town sought to potentially take the property by eminent domain but ran into a legal battle with Shwachman, the CEO of Worcester-based First American Realty. In 2019, Shwachman settled a lawsuit with the Hopedale Housing Authority, local developer Lobisser Building Corp. and others who planned to develop the property.

As part of the new efforts to redevelop the property, Shwachman and Hopedale Properties conducted a market study to determine the potential best use of the site. Those findings have so far included multi-family and senior residential, industrial/flex space, open space, and destination and/or cluster retail.

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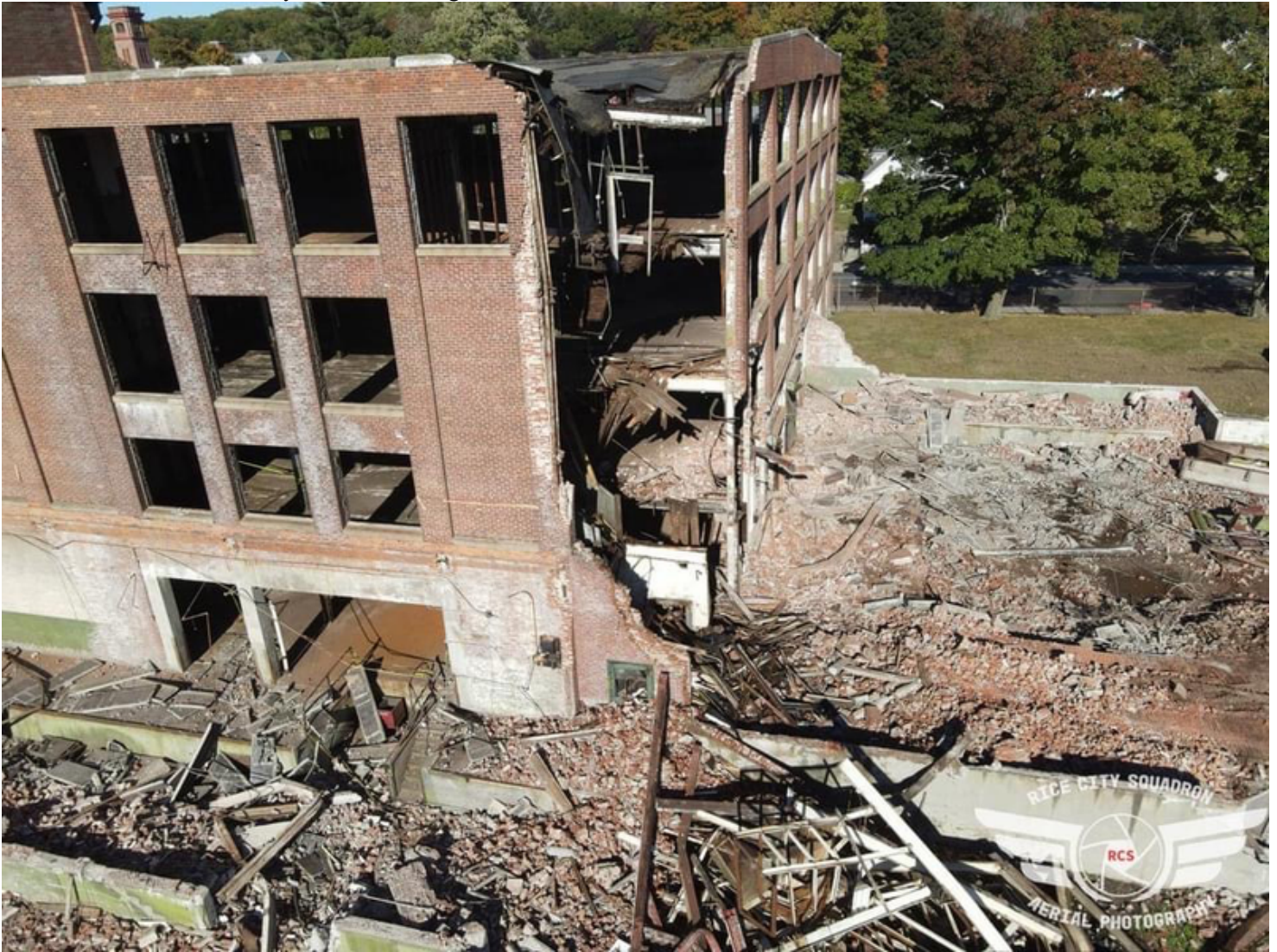


EVENT PRODUCTION SERVICES

EXHIBIT B

Demolition of former Draper Mill started

Oct 27, 2020 10:09AM • By Susan Manning



After sitting vacant for nearly four decades, the former Draper Mill is finally seeing some movement.

The broken windows and empty hallways of the buildings, which sit on 77 acres in the center of Hopedale, at one time employed thousands of people.



In an effort to breathe new life into a central location in town, demolition of 1/4 of the complex started this fall and is expected to take six months, according to Worcester Business Development Corporation.

Hopedale Properties Principal Philip Shwachman contracted to have a 250,000-square-foot swath of the property taken down because of “significant structural and environmental concerns to redevelopment efforts,” according to the WBDC.

“Mr. Shwachman initiated that abatement and demolition activities of approximately 250,000 sf of the southern portion of the 1,000,000 sf complex in August 2020. The rationale for undergoing these activities was due to significant structural and environmental conditions that were posing safety concerns. To date, the abatement of this section of the building has been completed and interior demolition has commenced,” said Julie Holstrom, senior project manager at WBDC.

The work is focusing on the portion of the former mill that faces Hopedale Street.



According to the WBDC, the town filed a mixed-use plan for the site in 2018 to revitalize 139 acres. After a legal battle in August 2019, Schwachman settled with the town. He is currently working with the town to come up with a redevelopment plan for the site.

“The WBDC has been working with Mr. Shwachman, the property owner, to complete a master planning process, including a market study, for the Draper complex. We have secured some of the preliminary market study findings and believe that these findings will help to inform future development concepts for the complex,” said Holstrom.

The mill manufactured power looms for the textile industry until 1980, when business was lost to competition overseas and the mill closed.

According to Holstrom, Schwachman is working in close collaboration with the town and CMRPC to develop a plan for down the road.

“Mr. Shwachman is working with the town and the Central Massachusetts Regional Planning Commission (CMRPC) on their overall Master Planning process to develop a comprehensive plan for Hopedale. This larger Master Plan process can and will include the Draper complex as part of the conversation,” she said.

EXHIBIT C



[Request Info](#)

[MENU](#)

Draper factory, iconic Hopedale landmark, to be almost fully dismantled

02
DEC

DRAPER FACTORY, ICONIC HOPEDALE LANDMARK, TO BE ALMOST FULLY DISMANTLED

By Alison Bosma, The Milford Daily News

HOPEDALE — Nearly the entire former Draper factory complex in downtown Hopedale is now fated for demolition.

“... we determined that, as much as we would have liked to save it, and look for a re-purposing option, the severe deterioration and safety concerns were more than we were comfortable with,” said Philip Shwachman, principal of Hopedale Properties, LLC, which owns the property, “and we felt that the liability was greater than any potential benefits.”

A small, slightly more modern building at 7 Fitzgerald St., set back from the main drag, will remain standing, possibly with a couple of other smaller structures. But all of the buildings

along Hopedale and Freedom streets, a towering wall of brick and glass that has overlooked Hopedale for more than a century, are expected to be gone by next summer.

“It would have been nice if we could have kept a piece of it,” Selectman Louis Arcudi III said. “I’m sure that you guys are envisioning something here ... to honor the folks and residents that had worked there or family members that worked there.”

The factory was a major employer for Hopedale and other nearby towns in the early to mid-1900s, but shut down for good in 1980. It’s been largely vacant since.

The decision to demolish was made in at least three stages. A wing along Hopedale Street was approved for demolition earlier this year and was razed in late summer and early fall. Shwachman said crews are awaiting the town’s sign-off on the demolition permit for the Freedom Street wing, and that once asbestos abatement is complete on the remaining corner, such a permit will be filed for that, too.

June is the target date for completion.

Shwachman contracted the Worcester Business Development Corp., a nonprofit that has taken on historical projects such as Worcester’s Hanover Theatre and the Telegram & Gazette building, to redevelop the site.

“We take on projects that are not ready for the conventional market, and I can assure you that the Draper Mills project is not ready for the conventional developer,” Worcester Business Development Corp. President and CEO Craig Blais told selectmen this week. “It’s been proven time and time again over the years that it needs help ... and the WBDC sits between the private sector and the public sector where we can be utilized to bring public sector resources to the table to help the conventional market and the private sector succeed.”

Preliminary market research from the nonprofit suggests the site could be used for different types of residences, “light” industry and open space, Blais said.

“We do not want to fool anyone or sugarcoat the process by saying some big, large employer is going to show up in Hopedale,” Blais said. “The reality is, you are limited, access-wise, back to (Rte.) 146, back through Milford to (Interstate) 495, but we think we’ve got it right with the type of ... light industrial flex space that has surfaced as a potential reuse.”

A plan for the site could include running connecting streets through the massive property, he added.

“The whole site originally serviced just one company with multiple activities,” Shwachman added. “There really is no market for that, so our vision is to create a grid and multiple sites with new circulation between the main streets of Hopedale, with smaller uses.”

Shwachman and the nonprofit plan to work with the town while a local committee comes up with a new long-term master plan for the town, to include its downtown and the Draper property.

EXHIBIT D

After 'severe deterioration,' a historic Hopedale factory will face the wrecking ball, owner says

NEWS



A woman walks past Draper Corp. factory in Hopedale on July 29, 2018. *Jessica Rinaldi/Globe Staff*

Christopher Gavin --- Boston.com staff

December 2, 2020 6:00 pm

The former Draper Corp. factory in the heart of Hopedale, which once churned out textile machinery used the world over, will be completely demolished next year, the owner of the complex says.

A potential re-use of the sprawling, once 1.8-million square foot building has been long imagined since workers last walked through its doors [four decades ago](#). But the reality that the brick-and-mortar industrial shell cannot have a second life set in as crews [completed asbestos abatement and demolished a large portion of the structure](#) this fall amid efforts to reinvigorate the 77-acre property for potential redevelopment.

[“We determined that as much as we would have liked to save it and look for a repurposing option, the severe deterioration and safety concerns were more than we were comfortable with, and we felt that the liability was greater than any potential benefit,”](#) owner Philip Shwachman, principal of Hopedale Properties and CEO and founder of Worcester-based First American Realty Inc., [told town selectmen Monday night.](#)

Abatement of a 250,000 square-foot wing of the building started in August and has been completed, according to Shwachman, who has owned the factory since the 1990s. Workers are in the final stretch of demolition for that portion.

Shwachman estimated additional abatement for the remaining facilities will take between three and four months to carry out, with the final demolition finished by the end of June.

[“It’s possible that there may be delays, but we hope to expedite it and so far things have been moving along very smoothly,”](#) Shwachman said.

Shwachman has engaged the Worcester Business Development Corp. to develop a master plan for the site, in tandem with a process for a town-wide master plan that will incorporate future possibilities for the property.

Craig Blais, president and CEO of the WBDC, said during [Monday’s virtual meeting](#) the nonprofit repeatedly brought private developers to the complex, who told the team the factory was just too large and in need of too much work to make reuse projects feasible.

Demolition, he said, is not something the WBDC takes lightly.

[“Obviously \[there’s\] great history with the Draper complex in Hopedale,”](#) Blais said. [“We know that many, many residents worked there, have connections to that history.”](#)

The small town on the eastern edge of Worcester County indeed owes much of its history to the massive factory that overlooks its downtown.

Generations made a living at the Draper Corp. (among them at one time [a young Joe Perry](#), the lead guitarist of Aerosmith), from the mid-1800s when brothers Ebenezer and George Draper brought the business to Hopedale until the factory shuttered in 1980.

Nestled in the pioneering industrial Blackstone Valley, the loom manufacturer also built [Hopedale’s historic duplexes to house its workforce](#) at affordable prices for families. Much of the early 20th century subdivisions [are still standing](#).

Blais said the WBDC hopes to find a way to illuminate the factory’s history in whatever comes next for the property.

“That would have been nice, if we could have kept, you know, a piece of it,” Selectmen Louis Arcudi III said of the building.

“I thank you for at least allowing the residents of Hopedale and their family members to have a piece of that mill still somehow be part of your theme when you’re building it out,” he told Blais.

With the pillar of local economic growth long dormant, town officials have continuously sought options to spur activity again at the site, especially in a community where commercial property is lacking.

Shwachman and local officials put together a reuse plan in 2007, which spelled out the potential for a mixed-use development with homes, stores, and offices. But the vision gathered dust, especially in the throes of the Great Recession.

In 2018, selectmen presented a nearly \$50 million Urban Renewal Plan for another mixed-use development on the property — with 565 housing units and 175,000 square feet of commercial space — and considered seizing the property by eminent domain. [Shwachman filed a lawsuit in response](#) and [reached settlements](#) with the town and other defendants last year.

With the site’s master plan initiative underway, Blais said uses for the site are relatively limited, given the town’s distance from Interstate-495 and Route 146.

“We do not want to fool anyone or sugarcoat the process by saying some big, large employer is going to show up in Hopedale,” he said.

But Shwachman and Blais are optimistic about what’s ahead.

Some early themes arising in the planning process include the potential for flexible, light industrial use and housing “in many different forms,” Blais said.

A press release from Shwachman’s First American Realty said initial findings from the WBDC’s market study indicate a possible future with multi-family and senior housing, open space, and/or retail.

The Mill River, which flows under the factory from the adjacent Hopedale Pond, could be key in attracting developers, Blais said.

The team plans to tap on some prospective re-developers to provide input as the planning process plays out, according to Blais.

“We heard loud and clear from the town — I sat in on ... some of the eminent domain hearings and listened intently to the debate — and clearly heard the frustration of the many cycles that have been missed of the economy over the last 30, 40 years and having to live with the vacant mill being there,” he said. “I fully understand the frustration ... It’s critical for the long-term success of the community that activity happen there.”

EXHIBIT E

Crime & Safety

Draper Mill In Hopedale Partially Collapses

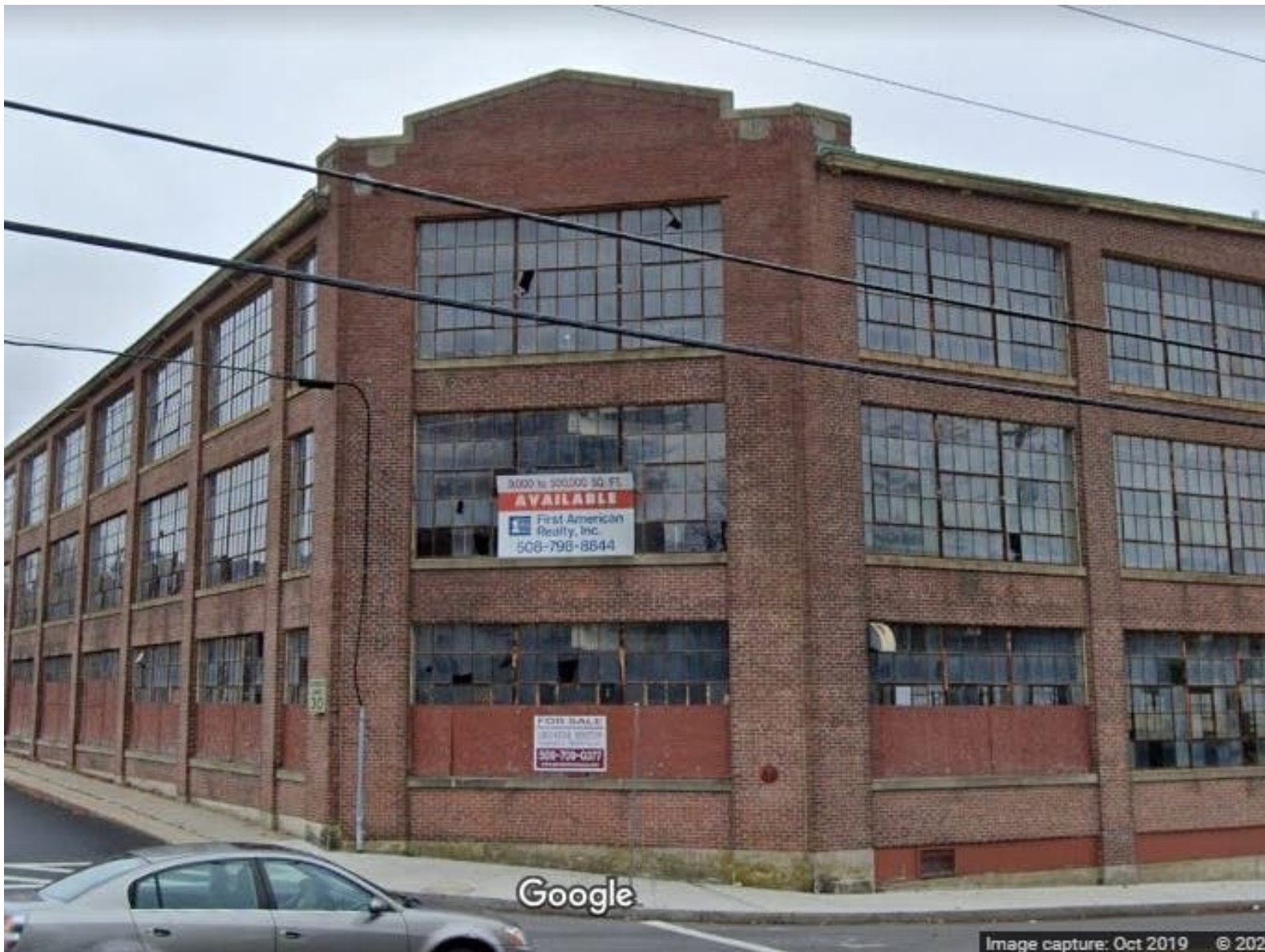
A portion of the historic mill collapsed onto a Hopedale street near rush hour on Tuesday.

By Neal McNamara, Patch Staff

Jul 28, 2021 8:42 am EDT | Updated Jul 28, 2021 8:43 am EDT

Like 52 Share

Reply



A portion of the former Draper Mill in Hopedale collapsed on Tuesday afternoon, according to police. (Google Maps)

HOPEDALE, MA — A part of the historic Draper Mill in Hopedale collapsed Tuesday afternoon, sending debris onto town streets, according to police.

The collapse happened around 4:30 p.m. Tuesday near the intersection of Hopedale and Freedom streets. A passing motorist witnessed the collapse, police said, but no one was injured. The incident closed roads in the town's downtown area during rush hour.

The mill is in the process of being demolished. Crews will now turn their attention to tearing down the collapsed portion.

Subscribe

"Per direction of the Hopedale Fire Department and the Hopedale Building Inspector the remaining portion of the building is to be taken down

The mill covers 77 acres in the center of Hopedale. The mill closed in the late 1970s after more than 100 years in business, leaving hundreds without jobs. At its peak, the Draper factory employed more than 3,000 people making parts for looms.

The property owner decided to demolish the entire building last fall after finding too many environmental and structural problems to repurpose the mill.

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Around the Web

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YourBump

The Cast Finally Admit That the

ItsTheVibe

Look Inside the Abandoned Military Base in Massachusetts

At 56, Rick's New Wife Might Look Familiar to You

EXHIBIT F





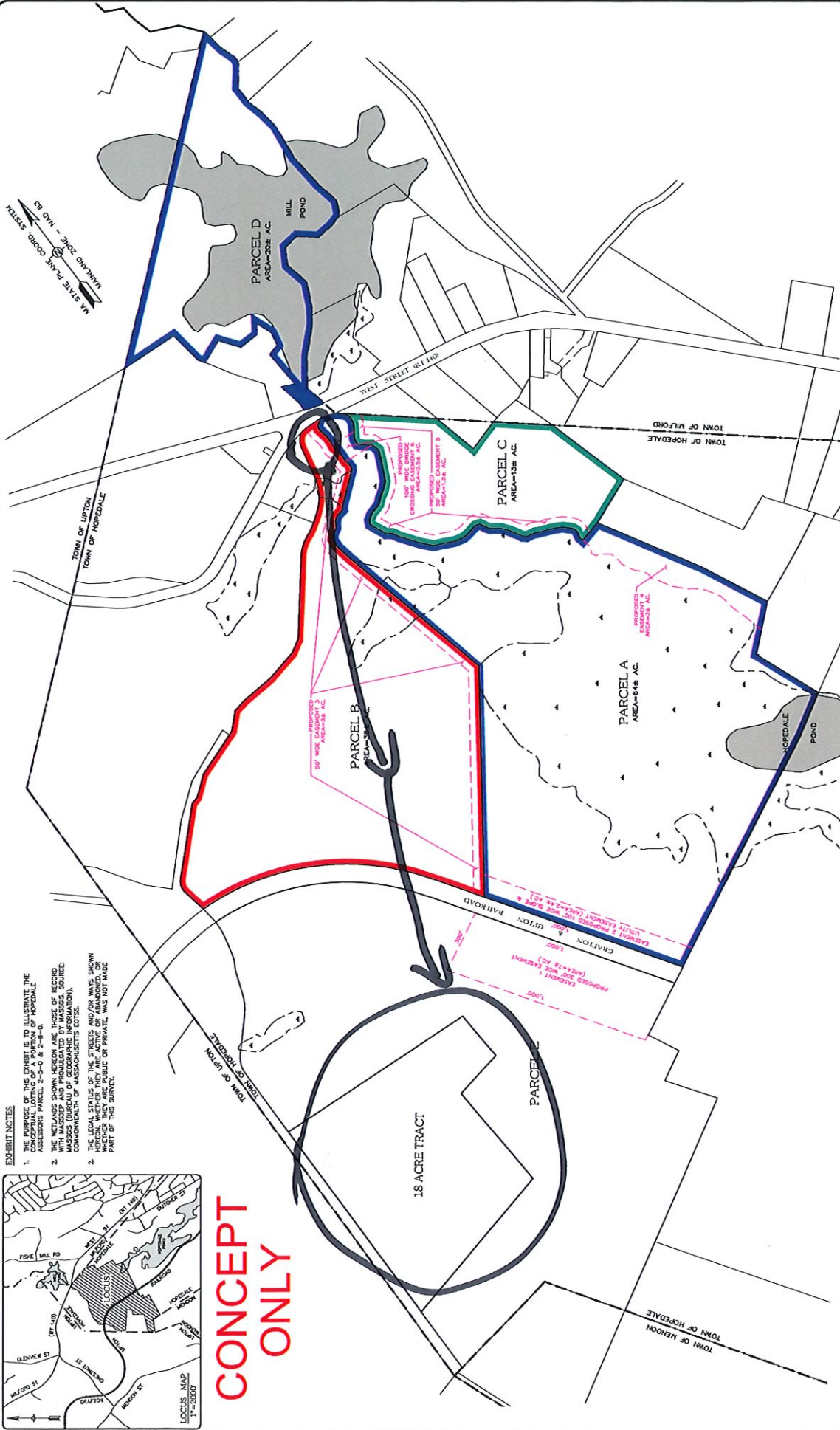




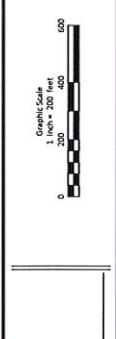
CONCEPT ONLY

EXHIBIT NOTES

1. THE PURPOSE OF THIS EXHIBIT IS TO ILLUSTRATE THE CONCEPTUAL LAYOUT OF A PORTION OF HOPEDALE TOWN.
2. THE METERS SHOWN HEREIN ARE BASED ON RECORDS WITH METERS AND PROVIDED BY MASSGIS. SOURCE: MASSGIS (BUREAU OF GEOGRAPHIC INFORMATION), COMMONWEALTH OF MASSACHUSETTS 01918.
3. A LEGAL DESCRIPTION OF THE LAND SHOWN HEREIN, INCLUDING WHETHER THE SAME ARE PUBLIC OR PRIVATE, WAS NOT MADE PART OF THIS EXHIBIT.



REVISIONS:
 NO. DATE BY
 0 1/25/21 ISSUED FOR AGREEMENT
 1 1/25/21 REVISED FOR AGREEMENT



PREPARED BY:
ED
 Engineering Design Consultants, Inc.
 32 Turnpike Road
 Southborough, Massachusetts
 (508) 480-0225

PROJECT:
 GRAFTON & UPTON RAILROAD
 364 WEST STREET
 (WORCESTER COUNTY)
 HOPEDALE, MASSACHUSETTS

TITLE:
 CONCEPTUAL LAND DIVISION
 EXHIBIT
 PREPARED FOR:
 Grafton & Upton Railroad Company
 42 Westboro Road
 North Grafton, Massachusetts 01536

DATE: JANUARY 26, 2021
 1 of 1
 EXHIBIT NUMBER: 3659

EXHIBIT 1

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)	
PHILIP O. SHWACHMAN, et al.,)	No. 4:18-cv-40209-TSH
)	
Plaintiffs,)	
)	
v.)	
)	
TOWN OF HOPEDALE, et al.,)	
)	
Defendants.)	
_____)	

AGREEMENT FOR JUDGMENT

WHEREAS, Plaintiffs commenced a legal action against the Town of Hopedale, the Town of Hopedale Board of Selectmen, Thomas A. Wesley, Louis J. Arcudi, III, Brian R. Keyes, Steven A. Sette, Jason G. MacDonald, the Hopedale Downtown Revitalization Committee, the Hopedale Planning Board and Donald. W. Howes (collectively “Municipal Defendants”) along with other defendants on November 20, 2018 in the Commonwealth of Massachusetts Worcester County Superior Court styled as Shwachman, Philip O. et al. v. Town of Hopedale et al., No. 1885CV01781, (the “Action”);

WHEREAS, the Action was removed on December 18, 2018 to the United States District Court for the District of Massachusetts styled as Shwachman et al v. Town of Hopedale et al, No. 4:18-CV-40209-TSH;

WHEREAS, Plaintiffs filed their First Amended Complaint on January 30, 2019, restating their previous claims;

WHEREAS, the Plaintiffs and the Municipal Defendants attended Alternative Dispute Resolution on July 18, 2019, August 21, 2019 and October 31, 2019 where the Plaintiffs reached

an agreement with the Municipal Defendants and recited on the record the terms as memorialized below;

WHEREAS, the Plaintiffs and the Municipal Defendants have executed a Settlement Agreement resolving their disputes in this matter;

NOW, THEREFORE, it is agreed, by and between the Plaintiffs and the Municipal Defendants, that the Plaintiffs' claims against the Municipal Defendants only shall be settled and dismissed in their entirety with prejudice on the following terms:

1. **Production of Records**: The Municipal Defendants will provide within 60 days from signing this Agreement for Judgment, all documents regarding the URP or the G&U Railroad that were withheld from Plaintiffs under the Public Records Act on any ground other than attorney client privilege or work product, and a privilege log for all documents withheld based on attorney client privilege or work product, with regard to the following public records requests dated:

- a. July 20, 2018;
- b. November 14, 2018; and
- c. November 26, 2018.

2. **Urban Renewal Plan**: The Municipal Defendants agree to the full, public and complete withdrawal of the URP and termination of the current URP process, including the removal of all mentions of the draft URP from the Town of Hopedale's website.

3. **Master Planning Process**: Mr. Shwachman or a representative will be invited by the Town to be a member of (a) any citizens' committee that is formed as part of the master planning process that the Town is now undertaking as it relates to downtown redevelopment or economic development of underutilized property in Hopedale in consideration of rezoning, and

(b) any citizens' committee that is formed as part of any urban renewal plan process undertaken by the Town that may affect any of Plaintiffs' properties. The Town agrees that any such master planning or urban renewal process shall not be effectively run by G&U Railroad or its affiliates, employees or owner. The parties will endeavor to jointly work together in good faith toward a viable development plan of Mr. Shwachman's properties and neighboring Town properties in order to promote economic development in the downtown area. Mr. Shwachman agrees to allow inspection of the property on reasonable notice for purposes of such development plan, with prior approval by Mr. Shwachman regarding which individuals will be attending the inspection.

4. Payment: The Municipal Defendants will reimburse Plaintiffs' attorneys' fees in the amount of \$50,000 ("Settlement Amount"). The Settlement Amount will be paid within fourteen (14) business days of the execution of this Agreement for Judgment.

5. Hopedale Pond Dam: In lieu of additional reimbursement of Plaintiffs' attorneys' fees by the Municipal Defendants, the Town will enter into an agreement regarding the Hopedale Pond dam operated by Plaintiffs which has been encroached upon by the reconstruction of the Freedom Street bridge by the Town. The agreement (attached as **Exhibit A**) will include (a) an agreement to construct a replacement catwalk and replace stop log boards and mechanism on the pond side of the dam at the Town's sole cost, together with an agreement to provide access to the catwalk for operation of the dam; (b) assistance by the Town with operation of the Dam, made necessary by relocation of the catwalk from the opposite side of the Dam; and (c) removal of former stop log boards and mechanisms as proposed by Town's engineers BETA, Inc. in plans provided to Plaintiff.

6. Incorporation by Reference of the Settlement Agreement. The Plaintiffs and the Municipal Defendants hereby incorporate by reference all of the terms of the Settlement

Agreement (attached as **Exhibit B**) as if they were set forth fully herein, and stipulate that the Settlement Agreement shall survive entry of this Agreement for Judgment as an independent contract.

TOWN OF HOPEDALE,
TOWN OF HOPEDALE BOARD OF
SELECTMEN, THOMAS A. WESLEY,
LOUIS ARCUDI, III, BRIAN R.
KEYES, STEVEN SETTE, DOWNTOWN
REVITALIZATION COMMITTEE,
HOPEDALE PLANNING BOARD
JASON MACDONALD and
DONALD W. HOWES,

By their attorney,

/s/ Jeffrey T. Blake
Jeffrey T. Blake (BBO# 655773)
KP Law, P.C.
101 Arch Street, 12th Floor
Boston, MA 02110
(617)556-0007
jblake@k-plaw.com

Dated: January 21, 2020

Respectfully submitted,

PHILIP O. SHWACHMAN,
MATTHEW W. SHWACHMAN,
JUDITH L. SHWACHMAN,
HOPEDALE PROPERTIES, LLC, and
HOPEDALE INDUSTRIAL CENTER,
LLC

By their attorneys,

/s/ David E. Lurie
David E. Lurie (BBO #542030)
Harley C. Racer (BBO #688425)
Lurie Friedman LLP
One McKinley Square
Boston, MA 02109
Tel. 617-367-1970
dlurie@luriefriedman.com
hracer@luriefriedman.com

SO ORDERED:

Timothy S. Hillman, Judge

CERTIFICATE OF SERVICE

I hereby certify that this document was filed through the ECF system on January 21, 2020 and will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF).

/s/ Harley C. Racer
Harley C. Racer

EXHIBIT A

AGREEMENT REGARDING HOPEDALE POND DAM

This Agreement Regarding Hopedale Pond Dam (this “Agreement”) is entered into as of December 16, 2019 by and between Philip O. Shwachman; Hopedale Properties, LLC, a Massachusetts limited liability company with a principal place of business located at 100 MLK, Jr. Boulevard, Worcester, Massachusetts 01613, P.O. Box 646, Worcester, Massachusetts 01613-0646; and Hopedale Industrial Center, LLC, a Massachusetts limited liability company with a principal place of business located at 100 MLK, Jr. Boulevard, Worcester, Massachusetts 01613, P.O. Box 646, Worcester, Massachusetts 01613 (collectively “Shwachman”), and the Town of Hopedale (the “Town”). The entities referred to herein are sometimes individually referred to as a “Party” and sometimes collectively referred to as the “Parties.”

RECITALS

WHEREAS, Shwachman owns property abutting Hopedale Pond Dam (the “Dam”) in the Town of Hopedale;

WHEREAS, Shwachman owns certain water rights to the Hopedale Pond, including the water that passes through and over the Dam;

WHEREAS, Shwachman operates the Dam mechanisms and the water levels of the Hopedale Pond through the seasonal and occasional removal and replacement of a series of stop log boards on top of the Dam;

WHEREAS, the Town rebuilt and expanded the Freedom St. bridge, encroaching onto Shwachman’s property and preventing access to critical portions of the catwalk previously utilized to access the Dam and the stop log board mechanism;

WHEREAS, the expanded Freedom St. bridge prevents Shwachman from safely accessing the Dam and maintaining desired water levels of Hopedale Pond from his property.

NOW, THEREFORE, it is agreed, by and between Shwachman and the Town that this issue concerning the Dam shall be resolved and settled on the following terms:

1. Replacement Catwalk: The Town, at the Town’s sole cost, will construct a replacement catwalk, remove the former stop log boards and mechanisms and replace stop log boards and mechanism on the pond side of the Dam, as proposed by Town’s engineers BETA, Inc. in conceptual plans provided to Shwachman, attached hereto as **Exhibit A**.

2. Easement: Once final construction drawings are prepared and construction of the replacement catwalk has been completed, the Town will present a request to Town Meeting to grant an easement to Shwachman to the replacement catwalk for access to and for operation of the Dam. Such easement shall be in recordable form mutually agreeable to the Parties. The Board of Selectmen shall support the request for the Easement at Town Meeting. In the event that the Town does not vote to grant said easement, the Town shall issue a perpetual license to access the replacement catwalk and shall not terminate the

license except upon a material change to the Dam or surrounding area such that Shwachman no longer has a need to access the replacement catwalk for access to and for operation of the Dam.

3. Assistance with Operation of the Dam. The Town will provide to Shwachman additional personnel and equipment from the Hopedale Highway Department twice a year and as needed for, from time to time, and in case of emergencies to accomplish operations of the replacement stop log boards and mechanism on the pond side of the Dam, caused by relocation of the catwalk from the opposite side of the Dam.

4. Further Acts: Each of the Parties to this Agreement agree to perform any further acts and execute and deliver any documents that may be reasonably necessary to carry out the provisions contained in this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, and in agreement herewith, the Parties through their respective, duly authorized counsel have executed and delivered this Agreement as of the date first above written.



PHILIP O. SHWACHMAN



HOPEDALE PROPERTIES, LLC, and
HOPEDALE INDUSTRIAL CENTER, LLC by
Philip O. Shwachman, President of their
Managers

TOWN OF HOPEDALE,
TOWN OF HOPEDALE BOARD OF
SELECTMEN by

IN WITNESS WHEREOF, and in agreement herewith, the Parties through their respective, duly authorized counsel have executed and delivered this Agreement as of the date first above written.

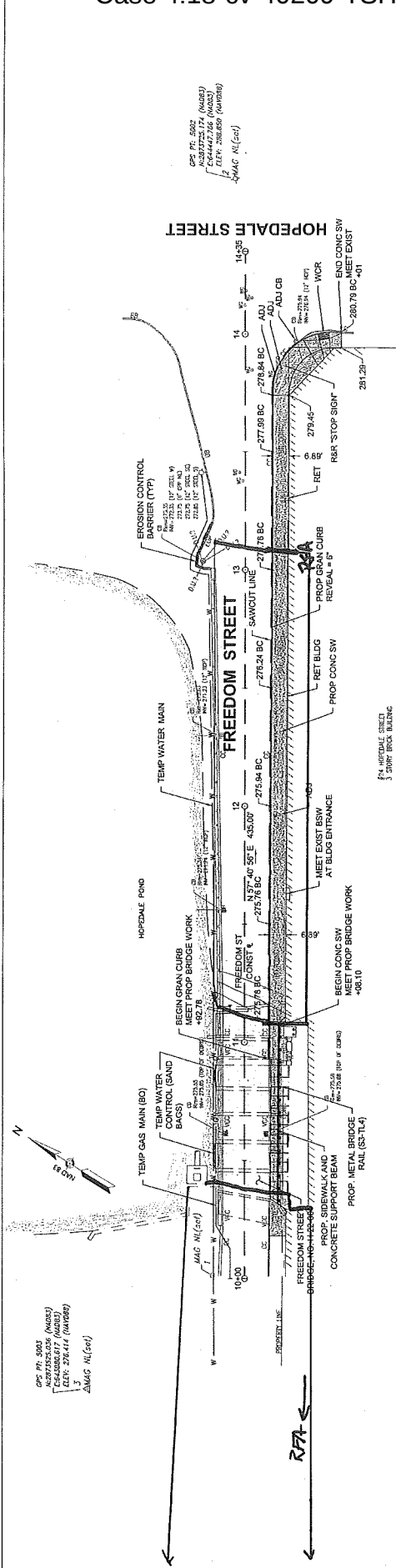
PHILIP O. SHWACHMAN

HOPEDALE PROPERTIES, LLC, and
HOPEDALE INDUSTRIAL CENTER, LLC by
Philip O. Shwachman, President of their
Managers

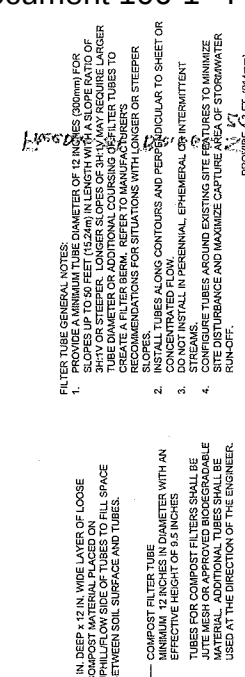


TOWN OF HOPEDALE,
TOWN OF HOPEDALE BOARD OF
SELECTMEN by

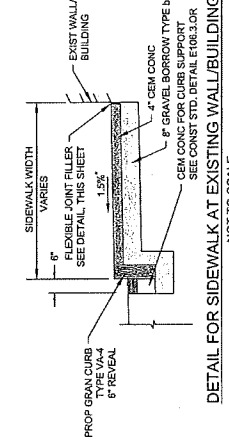
Exhibit A



SIDEWALK CONSTRUCTION PLAN
SCALE 1"=20'



DETAIL FOR SIDEWALK AT BRIDGE
NOT TO SCALE



DETAIL FOR SIDEWALK AT EXISTING WALL/BUILDING
NOT TO SCALE

COMPOST FILTER TUBE GENERAL NOTES:

1. PROVIDE A MINIMUM TUBE DIAMETER OF 12 INCHES (300mm) FOR SLOPES UP TO 5% FEET (15.24m) IN LENGTH WITH A SLOPE RATIO OF 1:1. FOR SLOPES GREATER THAN 5% FEET (15.24m) IN LENGTH, INCREASE TUBE DIAMETER OR ADDITIONAL COARSING OF FILTER TUBES TO CREATE A FILTER BERM. REFER TO MANUFACTURER'S RECOMMENDATIONS FOR SITUATIONS WITH LONGER OR STEEPER CONCENTRATED FLOW.
2. INSTALL TUBES ALONG CONTOURS AND PERPENDICULAR TO SHEET OR STRIPES.
3. INSTALL IN PERENNIAL EPHEMERAL OR INTERMITTENT STREAMS.
4. CONFIGURE TUBES AROUND EXISTING SITE FEATURES TO MINIMIZE SITE DISTURBANCE AND MAXIMIZE CAPTURE AREA OF STORMWATER RUNOFF.

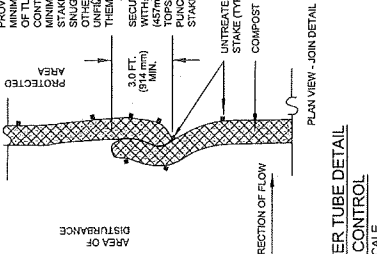
COMPOST FILTER TUBE DIAMETER WITH AN EFFECTIVE HEIGHT OF 9.5 INCHES

TUBES FOR COMPOST FILTERS SHALL BE JUTE MESH OR APPROVED BIODEGRADABLE MATERIAL. ADDITIONAL TUBES SHALL BE USED IN THE DIRECTION OF THE ENGINEER.

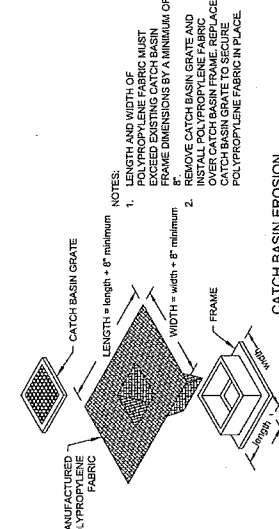
TAMP TUBES IN PLACE TO ENSURE GOOD CONTACT WITH SOIL SURFACE. IT IS NOT NECESSARY TO TRENCH TUBES INTO EXISTING GRADE.

2 INCH X 2 INCH X 3 FEET UNTREATED HARDWOOD STAKES UP TO 5 FT. IN PLACE OR AS REQUIRED TO SECURE TUBES.

WHEN STAKING IS NOT POSSIBLE, SUCH AS PAVEMENT, HEAVY CONCRETE OR OTHER FT APART OR AS REQUIRED TO SECURE TUBES IN PLACE.



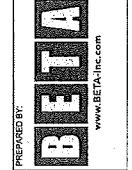
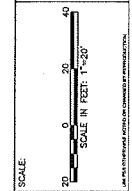
SINGLE COMPOST FILTER TUBE TUBE DETAIL FOR EROSION CONTROL
NOT TO SCALE



CATCH BASIN EROSION CONTROL PROTECTION (TYP)
NOT TO SCALE

BETA JOB NO.	273
PLOT DATE:	6/20/16 3:22 PM
ISSUE DATE:	4/22/20 3:24 PM
SHEET No.	1 OF 1
File: 2731 CONST.rvt	

FREEDOM STREET OVER MILL RIVER SIDEWALK CONST PLAN
HOPDALE, MASSACHUSETTS

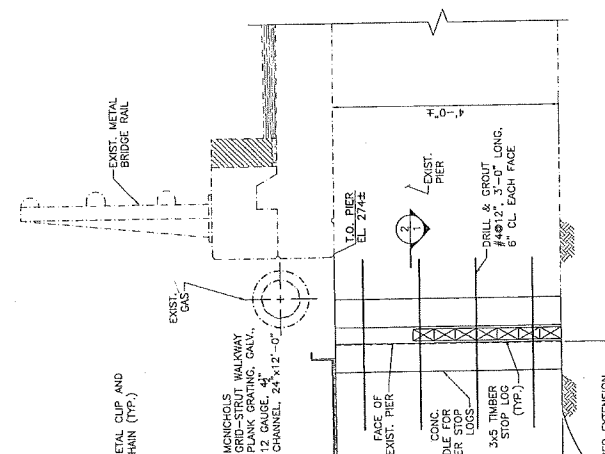
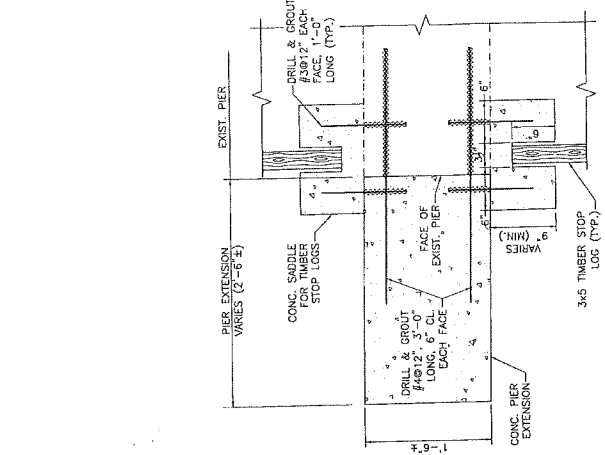
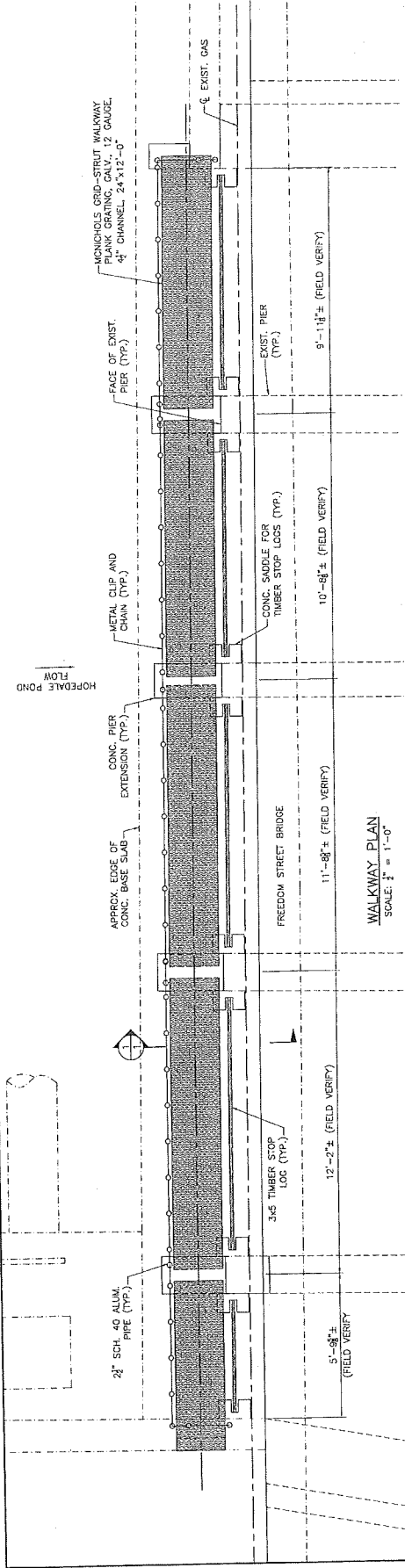


NO.	DATE	ISSUE BY/CHECKED BY	DESCRIPTION

DRAWN BY:	SD
DESIGNED BY:	SD
CHECKED BY:	DJ

PREPARED BY:	BETA
REVISIONS:	

PREPARED BY: BETA
www.BETA-inc.com



SECTION 1
SCALE: 1" = 1'-0"

SECTION 2
SCALE: 1" = 1'-0"

BETA JOB NO. 577 ISSUE DATE SHEET NO. 1	FREEDOM STREET OVER HOPEDALE POND HOPEDALE, IN WALKWAY ADDITION	TITLE AS SHOWN	SUBCONSULTANT BETA www.BETA-inc.com	REGISTERED PROFESSIONAL PREPARED BY For Review Only
REVISIONS				
NUMBER	DATE	MADE BY	CHECKED BY	INITIALS

Optima

STEEL

1. ALL STEEL SHALL CONFORM TO AASHTO M 270 GRADE 36.
2. ALL STEEL SHALL BE HOT DIP GALVANIZED TO CONFORM TO AASHTO-M11. GALVANIZED NUMBERS THAT ARE TO BE WELDED AFTER GALVANIZING SHALL BE MASKED 1
3. GALVANIZED NUMBERS THAT ARE TO BE WELDED AFTER GALVANIZING SHALL BE MASKED 1 FLANGE SHALL BE MASKED ITS FULL WIDTH AND LENGTH.

TIMBER

1. ALL TIMBER SHALL BE PRESSURE TREATED AS PER AASHTO SPECIFICATION M133.
2. ALL TIMBER SHALL BE SAWN LUMBER, SURFACED FOUR SIDES (S4S), UNLESS OTHERWISE NOTED, AND SHALL COMPLY WITH THE REQUIREMENTS OF AASHTO M188.
3. SAWN LUMBER SHALL BE PRESSURE TREATED WITH ACQ CONFORMING TO AWP, STANDARD P5. ALL MEMBERS SHALL BE FABRICATED BEFORE TREATMENT AND DRIED TO A MOISTURE CONTENT OF 19 PERCENT OR LESS AFTER TREATMENT.
4. ALL TIMBER SHALL BE REDRIILLED PRIOR TO TREATMENT.
5. BENT CAPS, JOISTS, BLOCKING, AND SPACERS SHALL BE SOUTHERN PINE, GRADE NO. 1 OR GREATER.
6. ALL TREATED TIMBER THAT IS FIELD CUT, EGGED THRU, DRILLED INTO OR DAMAGED SHALL BE RE-DRILLED TO MEET AASHTO STANDARD M4 WHICH REQUIRES THAT ALL CUTS, HOLES, OR INJURIES TO TREATED WOOD BE PROTECTED BY BRUSHING, SPRAYING, DIPPING, OR SOAKING IN AN APPROVED PRESERVATIVE.
7. ALL BOLTS SHALL BE HIGH STRENGTH ASTM A307, UNLESS OTHERWISE NOTED. LAG SCREW SHALL COMPLY WITH THE REQUIREMENTS OF ANSI/ASME STANDARD B19.2.1, GRADE 2.
8. ALL HARDWARE SHALL BE GALVANIZED AS PER CURRENT STATE SPECIFICATIONS AND/OR AASHTO SPECIFICATION M232.
9. CONSTRUCTION REQUIREMENTS SHALL CONFORM TO STATE SPECIFICATIONS. ALL TIMBER SHALL BE CUT TO LENGTH AND DRESSED TO SIZE REQUIRED PRIOR TO TREATMENT.
10. TIMBER WHICH AT THE DISCRETION OF THE ENGINEER IS SEVERELY WARPED, BOWED, SPLIT, OR SPUNKTERED SHALL NOT BE INCORPORATED IN THE WORK.
11. TIMBER RAIL POST SHALL BE SET VERTICAL IN THE FIELD.
12. TIMBER RAILS SHALL BE ATTACHED PARALLEL TO THE ACTUAL SLOPE OF DECK.
13. RAILS SHALL BE CONTINUOUS OVER TWO POSTS SPACING (MINIMUM).

BETA www.BETA-INC.com	For Review Only	REGISTERED PROFESSIONAL ENGINEER PREPARED BY	DRAWN BY: BWN DESIGNED BY: [] CHECKED BY: [] INITIALS	REVISIONS	NUMBER DATE CHECKED BY
SUBSIDIARY			TITLE		
SCALE			AS SHOWN		
FREEDOM STREET OVER HOPEDALE POND HOPEDALE, MA			NOTES		
BETA			2 OF 2		

EXHIBIT B

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release (this “Agreement”) is entered into as of December 16, 2019 by and between Philip O. Shwachman; Matthew W. Shwachman; Judith L. Shwachman; Hopedale Properties, LLC, a Massachusetts limited liability company with a principal place of business located at 100 MLK, Jr. Boulevard, Worcester, Massachusetts 01613, P.O. Box 646, Worcester, Massachusetts 01613-0646; and Hopedale Industrial Center, LLC, a Massachusetts limited liability company with a principal place of business located at 100 MLK, Jr. Boulevard, Worcester, Massachusetts 01613, P.O. Box 646, Worcester, Massachusetts 01613 (collectively “Plaintiffs”), and Town of Hopedale, the Town of Hopedale Board of Selectmen, Thomas A. Wesley, Louis J. Arcudi, III, Brian R. Keyes, Steven A. Sette, Jason G. MacDonald, the Hopedale Downtown Revitalization Committee, the Hopedale Planning Board and Donald. W. Howes (collectively “Municipal Defendants”). The entities referred to herein are sometimes individually referred to as a “Party” and sometimes collectively referred to as the “Parties.”

RECITALS

WHEREAS, Plaintiffs commenced a legal action against the Town of Hopedale, the Town of Hopedale Board of Selectmen, Thomas A. Wesley, Louis J. Arcudi, III, Brian R. Keyes, Steven A. Sette, Jason G. MacDonald, the Hopedale Downtown Revitalization Committee, the Hopedale Planning Board and Donald. W. Howes (collectively “Municipal Defendants”) along with other defendants on November 20, 2018 in the Commonwealth of Massachusetts Worcester County Superior Court styled as Shwachman, Philip O. et al. v. Town of Hopedale et al., No. 1885CV01781, (the “Action”);

WHEREAS, the Action was removed on December 18, 2018 to the United States District Court for the District of Massachusetts styled as Shwachman et al v. Town of Hopedale et al., No. 4:18-CV-40209-TSH;

WHEREAS, Plaintiffs filed their First Amended Complaint on January 30, 2019, restating their previous claims;

WHEREAS, the Plaintiffs and the Municipal Defendants attended Alternative Dispute Resolution on July 18, 2019, August 21, 2019 and October 31, 2019 where the Plaintiffs reached an agreement with the Municipal Defendants and recited on the record the terms as memorialized below;

NOW, THEREFORE, it is agreed, by and between the Plaintiffs and the Municipal Defendants, that the Plaintiffs’ claims against the Municipal Defendants only shall be settled and dismissed in their entirety with prejudice on the following terms:

1. Production of Records: The Municipal Defendants will provide within 60 days from signing this Settlement Agreement, all documents regarding the URP or the G&U Railroad that were withheld from Plaintiffs under the Public Records Act on any ground

other than attorney client privilege or work product, and a privilege log for all documents withheld based on attorney client privilege or work product, with regard to the following public records requests dated:

- a. July 20, 2018;
- b. November 14, 2018; and
- c. November 26, 2018.

2. **Urban Renewal Plan**: The Municipal Defendants agree to the full, public and complete withdrawal of the URP and termination of the current URP process, including the removal of all mentions of the draft URP from the Town of Hopedale's website.

3. **Master Planning Process**: Mr. Shwachman or a representative will be invited by the Town to be a member of (a) any citizens' committee that is formed as part of the master planning process that the Town is now undertaking as it relates to downtown redevelopment or economic development of underutilized property in Hopedale in consideration of rezoning, and (b) any citizens' committee that is formed as part of any urban renewal plan process undertaken by the Town that may affect any of Plaintiffs' properties. The Town agrees that any such master planning or urban renewal process shall not be effectively run by G&U Railroad or its affiliates, employees or owner. The parties will endeavor to jointly work together in good faith toward a viable development plan of Mr. Shwachman's properties and neighboring Town properties in order to promote economic development in the downtown area. Mr. Shwachman agrees to allow inspection of the property on reasonable notice for purposes of such development plan, with prior approval by Mr. Shwachman regarding which individuals will be attending the inspection.

4. **Payment**: The Municipal Defendants will reimburse Plaintiffs' attorneys' fees in the amount of \$50,000 ("Settlement Amount"). The Settlement Amount will be paid within fourteen (14) business days of the execution of this Settlement Agreement.

5. **Hopedale Pond Dam**: In lieu of additional reimbursement of Plaintiffs' attorneys' fees by the Municipal Defendants, the Town will enter into an agreement regarding the Hopedale Pond dam operated by Plaintiffs which has been encroached upon by the reconstruction of the Freedom Street bridge by the Town. The agreement (attached as **Exhibit A**) will include (a) an agreement to construct a replacement catwalk and replace stop log boards and mechanism on the pond side of the dam at the Town's sole cost, together with an agreement to provide access to the catwalk for operation of the dam; (b) assistance by the Town with operation of the Dam, made necessary by relocation of the catwalk from the opposite side of the Dam; and (c) removal of former stop log boards and mechanisms as proposed by Town's engineers BETA, Inc. in plans provided to Plaintiff.

6. **Agreement of Judgment**: The Parties, through their counsel, will execute and file a mutually acceptable Agreement of Judgment reflecting the terms of this Settlement Agreement and take any steps needed to have the agreement entered by the Court.

7. Mutual Releases:

- a. **The Municipal Defendants' Release:** In consideration of the covenants, representations and promises set forth in this Settlement Agreement from the Plaintiffs, which covenants, promises and representations survive this Release, the Municipal Defendants hereby release the Plaintiffs and their representatives, agents, attorneys, employees, directors, officers, shareholders, members, managers, affiliates, subsidiaries, divisions, agents, successors, and assigns (together, the "Plaintiff Releasees") from any and all actions, causes of action, suits, debts, charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, and expenses (including attorneys' fees and costs actually incurred), of any nature whatsoever, in law or equity, known or unknown, which the Municipal Defendants had or have against any of the Plaintiff Releasees relating to the subject-matter of this Action and/or the Urban Renewal Plan. The Municipal Defendants specifically reserve their rights to seek enforcement of this Settlement Agreement.
- b. **Plaintiffs' Release:** In consideration of the covenants, representations and promises set forth in this Settlement Agreement from the Municipal Defendants, which covenants, promises and representations survive this Release, the Plaintiffs hereby release the Municipal Defendants and their representatives, agents, attorneys, employees, directors, officers, shareholders, members, managers, affiliates, subsidiaries, divisions, agents, successors, and assigns (together, the "Municipal Releasees") from any and all actions, causes of action, suits, debts, charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, and expenses (including attorneys' fees and costs actually incurred), of any nature whatsoever, in law or equity, known or unknown, which the Plaintiffs had or have against any of the Municipal Releasees relating to the subject-matter of this Action and/or the Urban Renewal Plan. Specifically excluded from Plaintiffs' Release are any matters other than matters relating to this Action and the Urban Renewal Plan. The Plaintiffs specifically reserve their rights to seek enforcement of this Settlement Agreement.

8. Attorneys' Fees and Expenses: The Parties agree that, other than the Settlement Amount, each will bear all of the costs and expenses which it has incurred or shall incur, including, without limitation, attorneys' fees, which are in any way related to, or connected with or arise from, the filing, prosecution, negotiation or defense of the Action and/or the negotiation, drafting, execution or implementation of this Agreement.

9. Severability: The provisions of this Agreement are severable and should any provision be for any reason unenforceable, the balance shall nonetheless be of full force and effect.

10. Construction: Each Party has had a full and complete opportunity to review this Agreement, as has counsel for each Party. Accordingly, the Parties agree that the

common-law principles of construing ambiguities against the drafter shall have no application hereto. It should be construed fairly and not in favor of or against one Party as the drafter hereof.

11. Governing Law: This Agreement shall in all respects be interpreted, enforced and governed by and under the laws of the Commonwealth of Massachusetts.

12. Complete Bar: The mutual release as set forth in Paragraph 8 may be asserted as a defense and complete bar to any action, claim, cross-claim, cause of action, demand, arbitration, or other proceeding that may be brought, instituted, or asserted by the Municipal Defendants or Plaintiffs or anyone acting or purporting to act on behalf of the Municipal Defendants or Plaintiffs, excepting an action by any Party to enforce the terms of this Agreement and any matters other than matters relating to this Action and the Urban Renewal Plan.

13. Amendment: Except by a further written agreement signed by the Parties: (a) this Agreement may not be amended, altered, modified or changed in any way; and (b) no waiver, forbearance or failure to enforce any provision of this Agreement will be deemed to be a waiver of any right with respect to any other occurrence or with respect to any other provision hereof.

14. Representation by Counsel: Each Party represents and warrants that it has been represented by independent counsel of its own choice throughout all negotiations that preceded the execution of this Agreement. Each Party further represents and warrants that the contents of this Agreement have been explained to it by its counsel, and that this Agreement is executed voluntarily and with full knowledge of its significance.

15. Execution of Agreement: Each Party warrants and represents that it has the capacity, right and authority to execute this Agreement.

16. Effectiveness of Agreement: This Agreement shall become effective as of the date first written above.

17. Entire Agreement: This Agreement is the entire agreement among the Parties with reference to the subject matter hereof and all prior negotiations and understandings among the Parties, written or oral, pertaining to the subject matter hereof, have been merged herein. The Parties acknowledge that no representation or promise not expressly contained in this Agreement has been made, and further acknowledge that they are not entering into this Agreement in reliance upon any promise or representation, express or implied, other than those expressly contained in this Agreement.

18. Enforcement: It is further understood and agreed that if, at any time, a violation of any term of this Agreement is asserted by any Party, that Party shall have the right (except as may be expressly provided elsewhere in this Agreement) to seek specific performance of that term and/or any other necessary and proper relief, including but not limited to damages. Venue for such action shall be exclusively in the United States District Court for the District of Massachusetts. The prevailing Party in any such action shall be entitled to recover its reasonable costs and attorneys' fees.

19. Counterpart Execution: This Agreement may be executed in any number of counterparts and will be binding when it has been executed and delivered by the last signatory hereto to execute a counterpart. A facsimile signature or signature emailed in pdf form shall be deemed to constitute an original signature for purposes of this Agreement.

20. Headings: Headings contained in this Agreement are for the convenience of reference only and are not intended to alter or vary the construction and meaning of this Agreement.


21. Further Acts: Each of the Parties to this Agreement agree to perform any further acts and execute and deliver any documents that may be reasonably necessary to carry out the provisions contained in this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, and in agreement herewith, the Parties through their respective, duly authorized counsel have executed and delivered this Agreement as of the date first above written.




PHILIP O. SHWACHMAN



HOPEDALE PROPERTIES, LLC, and
HOPEDALE INDUSTRIAL CENTER, LLC by
its President, Philip O. Shwachman

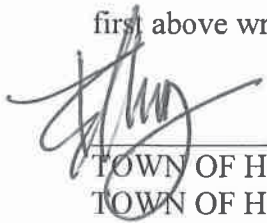


MATTHEW W. SHWACHMAN



JUDITH L. SHWACHMAN

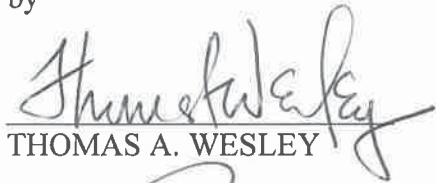
IN WITNESS WHEREOF, and in agreement herewith, the Parties through their respective, duly authorized counsel have executed and delivered this Agreement as of the date first above written.



TOWN OF HOPEDALE,
TOWN OF HOPEDALE BOARD OF SELECTMEN by

HOPEDALE PLANNING BOARD by

DOWNTOWN REVITALIZATION COMMITTEE
by



THOMAS A. WESLEY



LOUIS J. ARCUDI, III,



BRIAN R. KEYES



STEVEN A. SETTE



JASON MACDONALD



DONALD W. HOWES

IN WITNESS WHEREOF, and in agreement herewith, the Parties through their respective, duly authorized counsel have executed and delivered this Agreement as of the date first above written.

TOWN OF HOPEDALE,
TOWN OF HOPEDALE BOARD OF SELECTMEN by



HOPEDALE PLANNING BOARD by *Fletcher Ledy Blair 1/10/20*

DOWNTOWN REVITALIZATION COMMITTEE
by

THOMAS A. WESLEY

LOUIS J. ARCUDI, III,

BRIAN R. KEYES

STEVEN A. SETTE

JASON MACDONALD

DONALD W. HOWES

EXHIBIT A

AGREEMENT REGARDING HOPEDALE POND DAM

This Agreement Regarding Hopedale Pond Dam (this “Agreement”) is entered into as of December 16, 2019 by and between Philip O. Shwachman; Hopedale Properties, LLC, a Massachusetts limited liability company with a principal place of business located at 100 MLK, Jr. Boulevard, Worcester, Massachusetts 01613, P.O. Box 646, Worcester, Massachusetts 01613-0646; and Hopedale Industrial Center, LLC, a Massachusetts limited liability company with a principal place of business located at 100 MLK, Jr. Boulevard, Worcester, Massachusetts 01613, P.O. Box 646, Worcester, Massachusetts 01613 (collectively “Shwachman”), and the Town of Hopedale (the “Town”). The entities referred to herein are sometimes individually referred to as a “Party” and sometimes collectively referred to as the “Parties.”

RECITALS

WHEREAS, Shwachman owns property abutting Hopedale Pond Dam (the “Dam”) in the Town of Hopedale;

WHEREAS, Shwachman owns certain water rights to the Hopedale Pond, including the water that passes through and over the Dam;

WHEREAS, Shwachman operates the Dam mechanisms and the water levels of the Hopedale Pond through the seasonal and occasional removal and replacement of a series of stop log boards on top of the Dam;

WHEREAS, the Town rebuilt and expanded the Freedom St. bridge, encroaching onto Shwachman’s property and preventing access to critical portions of the catwalk previously utilized to access the Dam and the stop log board mechanism;

WHEREAS, the expanded Freedom St. bridge prevents Shwachman from safely accessing the Dam and maintaining desired water levels of Hopedale Pond from his property.

NOW, THEREFORE, it is agreed, by and between Shwachman and the Town that this issue concerning the Dam shall be resolved and settled on the following terms:

1. Replacement Catwalk: The Town, at the Town’s sole cost, will construct a replacement catwalk, remove the former stop log boards and mechanisms and replace stop log boards and mechanism on the pond side of the Dam, as proposed by Town’s engineers BETA, Inc. in conceptual plans provided to Shwachman, attached hereto as **Exhibit A**.

2. Easement: Once final construction drawings are prepared and construction of the replacement catwalk has been completed, the Town will present a request to Town Meeting to grant an easement to Shwachman to the replacement catwalk for access to and for operation of the Dam. Such easement shall be in recordable form mutually agreeable to the Parties. The Board of Selectmen shall support the request for the Easement at Town Meeting. In the event that the Town does not vote to grant said easement, the Town shall issue a perpetual license to access the replacement catwalk and shall not terminate the

license except upon a material change to the Dam or surrounding area such that Shwachman no longer has a need to access the replacement catwalk for access to and for operation of the Dam.

3. Assistance with Operation of the Dam. The Town will provide to Shwachman additional personnel and equipment from the Hopedale Highway Department twice a year and as needed for, from time to time, and in case of emergencies to accomplish operations of the replacement stop log boards and mechanism on the pond side of the Dam, caused by relocation of the catwalk from the opposite side of the Dam.

4. Further Acts: Each of the Parties to this Agreement agree to perform any further acts and execute and deliver any documents that may be reasonably necessary to carry out the provisions contained in this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, and in agreement herewith, the Parties through their respective, duly authorized counsel have executed and delivered this Agreement as of the date first above written.



PHILIP O. SHWACHMAN



HOPEDALE PROPERTIES, LLC, and
HOPEDALE INDUSTRIAL CENTER, LLC by
Philip O. Shwachman, President of their
Managers

TOWN OF HOPEDALE,
TOWN OF HOPEDALE BOARD OF
SELECTMEN by

IN WITNESS WHEREOF, and in agreement herewith, the Parties through their respective, duly authorized counsel have executed and delivered this Agreement as of the date first above written.

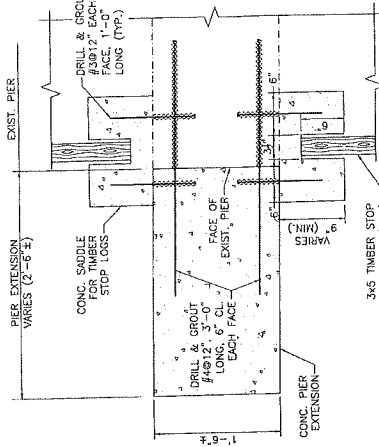
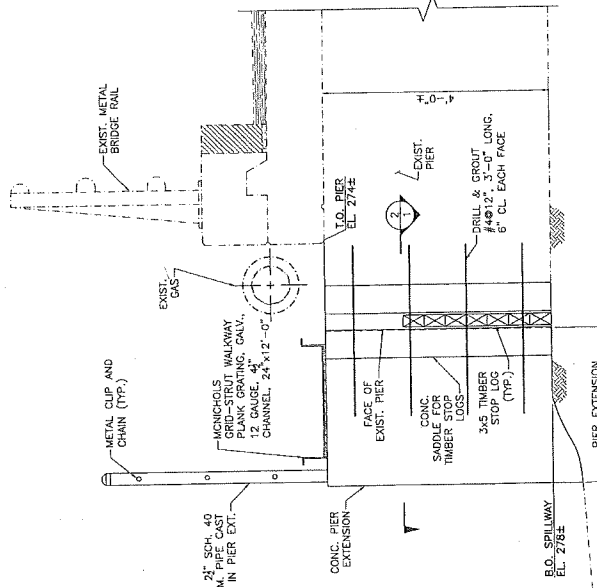
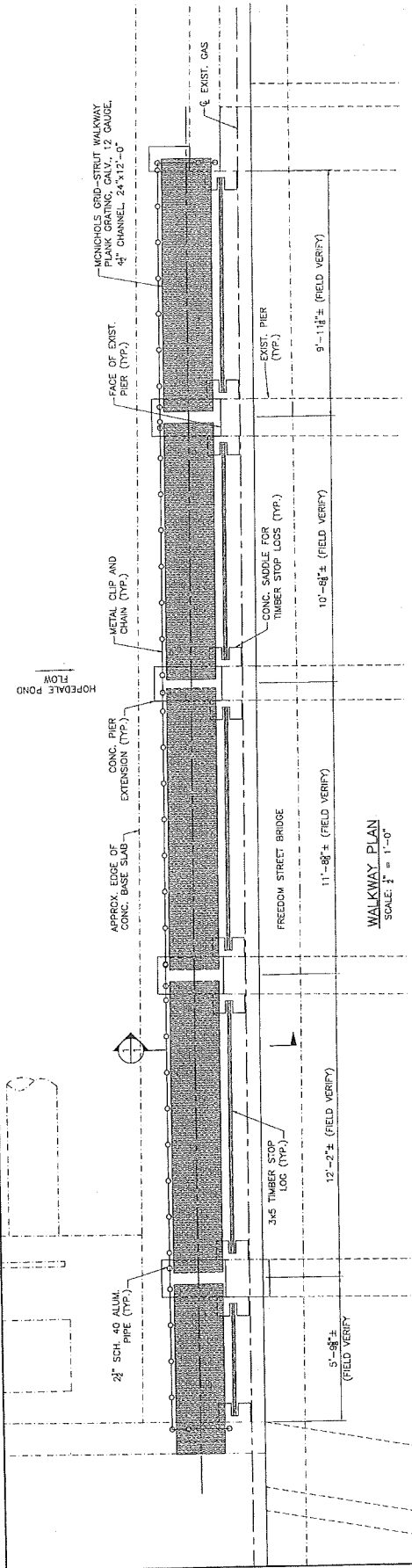
PHILIP O. SHWACHMAN

HOPEDALE PROPERTIES, LLC, and
HOPEDALE INDUSTRIAL CENTER, LLC by
Philip O. Shwachman, President of their
Managers



TOWN OF HOPEDALE,
TOWN OF HOPEDALE BOARD OF
SELECTMEN by

Exhibit A



BETA JOB NO. 577		ISSUE DATE		SHEET NO. 1	
FREEDOM STREET OVER HOPEDALE POND HOPEDALE, INA WALKWAY ADDITION					
SUBCONSULTANT		SCALE		TITLE	
AS SHOWN		AS SHOWN		AS SHOWN	
REGISTERED PROFESSIONAL PREPARED BY		FOR REVIEW ONLY		BETA INC. www.BETA-inc.com	
DESIGNED BY	INITS	DESIGNED BY	INITS	DESIGNED BY	INITS
CHECKED BY	INITS	CHECKED BY	INITS	CHECKED BY	INITS
NUMBER	DATE	MADE BY	CHECKED BY	NUMBER	DATE

Optima 2nd

- TIMBER**
- ALL TIMBER SHALL BE PRESSURE TREATED AS PER AASHTO SPECIFICATION M133.
 - ALL TREATED TIMBER SHALL BE FIELD CUT, EGED THRU, DRILLED INTO OR DAMAGED SHALL BE REPAIRED TO MEET AASHTO M133. ALL JOISTS SHALL BE PROTECTED BY BRUSHING, SPRAYING, DIPPING, OR SOAKING IN AN APPROVED PRESERVATIVE.
 - ALL JOISTS SHALL BE HIGH STRENGTH ASTM A507, UNLESS OTHERWISE NOTED. LAG SCREW SHALL COMPLY WITH THE REQUIREMENTS OF ANSI/ASME STANDARD B19.2.1, GRADE 2.
 - ALL HARDWARE SHALL BE GALVANIZED AS PER CURRENT STATE SPECIFICATIONS AND/OR AASHTO SPECIFICATION M232.
 - CONSTRUCTION REQUIREMENTS SHALL CONFORM TO STATE SPECIFICATIONS. ALL TIMBER SHALL BE CUT TO LENGTH AND DRESSED TO SIZE REQUIRED PRIOR TO TREATMENT.
 - TIMBER WHICH AT THE DISCRETION OF THE ENGINEER IS SEVERELY WARPED, BOWED, SPLIT, OR SPUNKTERED SHALL NOT BE INCORPORATED IN THE WORK.
 - TIMBER RAIL POST SHALL BE SET VERTICAL IN THE FIELD.
 - TIMBER RAILS SHALL BE ATTACHED PARALLEL TO THE ACTUAL SLOPE OF DECK.
 - RAILS SHALL BE CONTINUOUS OVER TWO POSTS SPACING (MINIMUM).
- STEEL**
- ALL STEEL SHALL CONFORM TO AASHTO M 270 GRADE 36.
 - ALL STEEL SHALL BE HOT DIP GALVANIZED TO CONFORM TO AASHTO-M11. GALVANIZED NUMBERS THAT ARE TO BE WELDED AFTER GALVANIZING SHALL BE MASKED 1 INCH FROM ALL SIDES OF THE WELD LINE PRIOR TO GALVANIZING. THE TOP OF THE TOP FLANGE SHALL BE MASKED ITS FULL WIDTH AND LENGTH.

BETA PROJ. NO.	5275	FREEDOM STREET OVER HOPEDALE POND HOPEDALE, MA				ISSUE DATE	2 OF 2
TITLE	AS SHOWN	NOTES				SHEET NO.	2 OF 2
BETA www.BETA-Int.com							
For Review Only REGISTERED PROFESSIONAL PREPARED BY							
DRAWN BY:	BWN						
DESIGNED BY:	INITIALS						
CHECKED BY:	INITIALS						
REVISIONS							
NUMBER	DATE	MADE BY	CHECKED BY				

EXHIBIT 2

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

<hr/>	
PHILLIP O. SHWACHMAN, MATTHEW W.)
SCWACHMAN, JUDITY L. SCWACHMAN,)
HOPEDALE PROPERTIES, LLC, and)
HOPEDALE INDUSTRIAL CENTER)
Plaintiff,)
v.)
)
)
TOWN OF HOPEDALE, TOWN OF)
HOPEDALE BOARD OF SELECTMEN,)
THOMAS A. WESLEY, LOUIS J. ARCUDI,)
III, BRIAN R. KEYES, STEVEN A. SETTE,)
GRAFTON & UPTON RAILROAD,)
JON DELLI PRISCOLI, MICHAEL D.)
MILANOSKI, JASON G. MACDONALD,)
FIRST COLONY GROUP, LLC,)
DRAPER FALLS, LLC, LOBISSER)
BUILDING CORP., KEVIN LOBISSER,)
HOPEDALE HOUSING AUTHORITY,)
HOPEDALE DOWNTOWN)
REVITALIZATION COMMITTEE,)
HOPEDALE PLANNING BOARD, and)
DONALD W. HOWES,)
Defendants.)
<hr/>	

CIVIL ACTION
No. 18-40209-TSH

**MEMORANDUM OF DECISION AND ORDER ON PLAINTIFFS’ MOTION FOR
REMAND, PLAINTIFFS’ MOTION TO DISMISS COUNTS XI AND XII AND
JOINT MOTION FOR ENTRY OF JUDGMENT**

May 19, 2021

HILLMAN, D.J.

Plaintiffs Philip O. Shwachman, Hopedale Properties, LLC, and Hopedale Industrial Center, LLC (collectively, “Plaintiffs”) brought this action in Massachusetts Superior Court, Worcester County, on November 21, 2018, asserting state and federal claims against Defendants the Town

of Hopedale, the Town of Hopedale Board of Selectmen, Thomas A. Wesley, Louis J. Arcudi, III, Brian R. Keyes, Steven A. Sette, Jason G. MacDonald, the Hopedale Downtown Revitalization Committee, the Hopedal Housing Authority, the Hopedale Planning Board and Donald. W. Howes (collectively “Municipal Defendants”); the Grafton & Upton Railroad Company (“G&U”), Jon Delli Priscoli (“Delli Priscoli”), First Colony, LLC (“First Colony”), and Michael Milanoski (“Milanoski”) (collectively, the “Railroad Defendants”); Defendants Kevin Lobisser; Lobisser Building Corp.; Draper Falls, LLC (collectively, the Lobisser Defendants”). The claims involved the process by which Defendants attempted to redevelop large parcels of land and empty buildings owned by Plaintiffs in the Town of Hopedale.¹

The Defendants removed the action to this Court on December 19, 2018. The first ten Counts of the Complaint bring state law claims for equitable relief against the Municipal parties. The Complaint alleges, in Counts I through X, that the Defendants engaged in intentional and repeated violations of state laws that are designed to promote transparency, openness and honesty in municipal government, including serial violations of M.G.L. c. 30A, § 23 (the Open Meeting Law), M.G.L. c. 66 (the Public Records Law), state rules and guidelines regarding the public bidding process, M.G.L. c. 268A (conflict of interest statute), and M.G.L. c. 121B (the state urban renewal statute). There are two Counts brought under 42 U.S.C. § 1983. Count XI alleges violations of the Shwachman Plaintiffs’ rights under the First Amendment of the United State Constitution as well as substantive and procedural due process rights under the Fifth and Fourteenth Amendments. Count XII alleges a violation of the Fourteenth Amendment’s right to equal protection.

¹ Plaintiffs Matthew W. Shwachman and Judith L. Shwachman are no longer parties to the action, having joined only in the now-resolved Open Meeting Law claim, Count IX, against some of the Municipal Defendants.

The Railroad Defendants removed the action to federal court on December 19, 2018. (Docket No. 1). On January 17, 2019, Plaintiffs moved for remand back to Superior Court. (Docket No. 23). Plaintiffs' motion for remand remains pending. Following three days of Court-ordered mediation conducted by Magistrate Judge Marianne Bowler, Plaintiffs resolved their claims involving the Municipal and Lobisser Defendants, leaving only six claims, Counts XI through XVI against the Railroad Defendants as the sole remaining defendants. Counts XI and XII are federal civil rights claims and the remaining four are state claims.

Before the Court are six motions: the Schwachman Plaintiffs' Motion to Remand (Docket No. 23); the Railroad Defendants' Special Motion to Dismiss the six counts against them under the Massachusetts Anti-SLAPP statute (Docket No. 30), specifically, Count XI (§ 1983 substantive and procedural due process violations of the First, Fifth and Fourteenth Amendments of the United States Constitution,); Count XII (§ 1983 Equal Protection violations of the Fourteenth Amendment to the United States Constitution); Count XIII (Massachusetts Civil Rights Act, "MCRA"); Count XIV (M.G.L. c. 93A); Count XV (tortious interference with advantageous business relationships); and Count XVI (civil conspiracy); Defendant Michael Milanoski's Special Motion to Dismiss under the Anti_SLAPP statute (Docket No. 37); the Schwachman-Municipal Joint Motion for Entry of Judgment (Docket No. 106); Plaintiffs' Motion to Dismiss Plaintiffs' Counts XI and XII (Docket No. 112); and the Railroad Defendants' Joint Motion for Judgment on the Pleadings (Docket 113).

Motion for Entry of Judgment

Plaintiffs and the Municipal Defendants negotiated an Agreement for Judgment (the "Agreement"), resolving this matter as to all of Plaintiffs' claims against the Municipal Defendants. They have asked the Court to approve the Agreement and enter the Judgment,

leaving the six claims against the Railroad Defendants. The Railroad Defendants oppose approval of the Agreement for Judgment on the grounds that it is unlawful and unenforceable. Defendants also argue that the Court should not enter separate and final judgment under Fed. R. Civ. P. 54(b) because the Plaintiffs do not meet the standard under which that rule can be employed on an entry of partial final judgment. Plaintiffs and the Municipal Defendants contend that the Railroad Defendants lack standing to participate in this litigation separately from the Town and to challenge the Agreement. Plaintiffs also contend that because the terms of the Settlement Agreement are fair and reasonable and it was vetted and approved by Magistrate Judge Bowler, the Agreement should be approved. Plaintiffs respond that they have not invoked Rule 54(b) and are not requesting separate and final judgment.

The Railroad Defendants oppose the joint motion for the entry of Agreement of Judgment on the grounds that the Agreement, which incorporates the Settlement Agreement entered between the Municipal Defendants and the Plaintiffs, is unlawful and unenforceable. Specifically, they argue that by agreeing to allow Plaintiff Schwachman to participate on a citizen's committee relating to downtown redevelopment in Hopedale, it is an unlawful relinquishment of police power. The Defendants also contend that because the Agreement affects the rights of third parties, including themselves, and they have not had notice or an opportunity to be heard, it should not be allowed by the Court.

Plaintiffs first argue that the Railroad Defendants, who are not party to the Settlement Agreement, lack standing to object to its terms. *See Varsity Wireless Inv'rs, LLC v. Town of Hamilton*, 370 F. Supp. 3d 292, 299 (D.Mass. 2019), appeal dismissed sub nom. *Varsity Wireless Inv'rs, LLC v. Woods*, No. 19-1446, 2019 WL 5692232 (1st Cir. Aug. 28, 2019) (defendant not a party to an agreement for judgment did not have standing to challenge it. While it appears the

Railroad Defendants lack standing to a settlement agreement to which they are not a party,² *see* 2A Fed. Proc., L. Ed. § 3:546, *Federal Procedure, Lawyers Edition* (March 2021 Update), the Court nevertheless reviewed their arguments against the terms of the Agreement.

“Approval of a proposed consent decree is committed to the discretion of the district court.” *United States v. Cannons Engineering Corp.*, 720 F.Supp. 1027, 1035 (D.Mass. 1989), *aff’d* 899 F.2d 79 (1st Cir. 1990). In assessing a proposed consent decree, the district court “must review [it] to ensure that it is fair, adequate and reasonable; that the proposed decree will not violate the Constitution, a statute or other authority; and that it is consistent with the objectives of Congress.” *See Conservation Law Found. of New England, Inc. v. Franklin*, 989 F.2d 54, 58 (1st Cir. 1993) (internal quotations and citations omitted). In addition, in evaluating the fairness of a proposed consent decree, “a court should examine both the procedural and substantive aspects of the decree,” and “fairness should be examined from the standpoint of signatories and non-parties to the decree.” *Cannons*, 720 F.Supp. at 1040. The court’s “discretion should be exercised in light of the strong policy in favor of voluntary settlement of litigation.” *Id.* at 1035.

The Agreement resolving the claims between the Plaintiffs and the Municipal Defendants includes an agreement to withdraw the draft urban renewal plan that was the crux of the parties’ initial feuding and the inclusion of Mr. Schwachman in future municipal planning efforts involving *his* property. The Agreement also states that the parties will not allow the Railroad Defendants to “effectively run” any future urban renewal plan to the extent that it may affect the Shwachman properties. It does not, however, strictly prohibit any of the Railroad Defendants from participating in any process involving these issues. Furthermore, the Agreement does not

² The Railroad Defendants elected to not participate in the mediation.

prejudice the Railroad Defendants or take away any of their legal rights or claims in this or any matter.

The public interest is served in that the Town will benefit from renewal of the town redevelopment process and its potential to improve its buildings and land. The Agreement will also save the taxpayers of the Town the expenses associated with further litigation. Accordingly, the Agreement for Judgment between Plaintiffs and the Municipal Defendants constitutes a “fair, adequate and reasonable compromise” concerning the costs and benefits to the Town of Hopedale and its residents and the Plaintiffs.

Finally, Defendants argue that Rule 54(b) does not authorize the entry of judgment for the Plaintiff and Municipal Defendants at this time. Plaintiffs and the Municipal Defendants agree that Rule 54(b) does not apply here and contend that their only reference to the rule is on the docket entry, where the electronic filing system did not allow for a more definitive choice. As it is clear in the motion and supporting memorandum that the parties are asking for approval of the Settlement Agreement and not separate and final judgment, the Court will enter the Agreement for Judgment as filed.

Motion to Dismiss and Motion to Remand

Pursuant to Fed. R. Civ. P. 41(a)(2), the remaining Plaintiffs move that the Court dismiss with prejudice Counts XI and XII of Plaintiffs’ First Amended Complaint for the reasons set forth below. In the alternative, Plaintiffs, pursuant to Fed. R. Civ. P. 15, move that the Court allow Plaintiffs to amend their complaint to dismiss Counts XI and XII and drop the claims and parties that have been resolved through settlement.

“Rule 41(a) (2) establishes a framework for district courts to enter voluntary dismissals.” *Esso Standard Oil Co. (Puerto Rico) v. Rodriguez–Perez*, 455 F.3d 1, 3 (1st Cir.2006); *see also Doe v. Urohealth Systems, Inc.*, 216 F.3d 157, 160 (1st Cir. 2000). By its terms, Rule 41(a)(2)

applies to the dismissal of “an action.” The plain and ordinary language of Rule 41(a)(2) allows a plaintiff to dismiss an entire action against a defendant as opposed to one of several claims against a defendant. *See Klay v. United Healthgroup, Inc.*, 376 F.3d 1092, 1106 (11th Cir. 2004) (text of Rule 41 “does not permit plaintiffs to pick and choose, dismissing only particular claims within an action”). “A plaintiff wishing to eliminate particular claims or issues from the action should amend the complaint under Rule 15(a) rather than dismiss under Rule 41(a).” *Id.* (quoting 8 James Wm. Moore *Moore's Federal Practice* § 41.21[2] (3rd ed. 2013)). A dismissal of Counts XI and XII is therefore inappropriate under Rule 41(a) (2). Rule 15(a), Fed. R. Civ. P. however, remains available to drop Counts XI and XII. “Courts in this district construe motions to withdraw some but not all of the claims against a particular defendant as motions to amend pleadings under Fed. R. Civ. P. 15 rather than motions to dismiss voluntarily under Fed. R. Civ. P. 41(a).” *Momenta Pharm., Inc. v. Teva Pharm. USA, Inc.*, No. 10–cv–12079–NMG, 2014 WL 298027, at *2 (D.Mass. Jan. 24, 2014) (collecting cases); *see Addamax Corp. v. Open Software Found., Inc.*, 149 F.R.D. 3, 5 (D.Mass. 1993) (recognizing that “Rule 15(a), Fed. R. Civ. P., is the proper vehicle to drop some but not all claims against a defendant or defendants”); *Moore's Federal Practice: Civil* § 41.21. The Court thus construes Plaintiffs’ motion as a motion to amend its complaint to remove Counts XI and XII. *Id.*

The Railroad Defendants did not bring counterclaims in this action and no discovery has been taken. The entire action has been stayed pending the Court-ordered mediation, which concluded with the Agreement. Counts XI and XII do not apply to the Railroad Defendants’ anti-SLAPP special motions to dismiss the Massachusetts state law claims because they are based on federal civil rights. Finally the Railroad Defendants will not be prejudiced by the dismissal of

Counts XI and XII as Plaintiffs seek dismissal with prejudice and do not intend to proceed with the claims.

If a “district court has dismissed all claims over which it has original jurisdiction,” it “may decline to exercise supplemental jurisdiction” 28 U.S.C. § 1367. “It has consistently been recognized that [supplemental] jurisdiction is a doctrine of discretion, not of plaintiff’s right.” *United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 726 (1966). “Certainly, if the federal claims are dismissed before trial, even though not insubstantial in a jurisdictional sense, the state claims should be dismissed as well.” *Id.*

Having disposed of the federal questions in the case, the Court must determine whether to exercise supplemental jurisdiction over the remaining state-law claims. “The district courts may decline to exercise supplemental jurisdiction over a claim” if “the district court has dismissed all claims over which it has original jurisdiction.” *Id.* § 1367(c)(3); *Uphoff Figueroa v. Alejandro*, 597 F.3d 423, 431 n.10 (1st Cir. 2010). The decision “is a ‘pragmatic and case-specific’ one” that is committed to the district court’s discretion; the court “must take into account considerations of judicial economy, convenience, fairness to the litigants, and comity.” *Delgado v. Pawtucket Police Dep’t*, 668 F.3d 42, 48 (1st Cir. 2012) (quoting *Roche v. John Hancock Mut. Life Ins. Co.*, 81 F.3d 249, 257 (1st Cir. 1996)). “[I]n the usual case in which all federal-law claims are eliminated before trial, the balance of factors to be considered under the pendent jurisdiction doctrine—judicial economy, convenience, fairness, and comity—will point toward declining to exercise jurisdiction over the remaining state-law claims.” *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 350 n.7, 108 S.Ct. 614 (1988). Having concluded that Plaintiffs’ federal claims must be dismissed, I will decline to exercise supplemental jurisdiction over plaintiffs’ remaining state law claims. *See Roche v. John Hancock Mut. Life Ins. Co.*, 81 F.3d 249, 256–57

(1st Cir.1996) (“In a federal-question case, the termination of the foundational federal claim does not divest the district court of power to exercise supplemental jurisdiction but, rather, sets the stage for an exercise of the court's informed discretion. In deciding whether to retain jurisdiction on such an occasion, the trial court must consider concerns of comity, judicial economy, convenience, fairness, and the like.”) (internal citations omitted).

Conclusion

For the above stated reasons, the Joint Motion for Entry of Agreement for Judgment (Docket No. 106) is hereby **GRANTED**; Plaintiffs’ Motion to Dismiss Count XI and Count XII (Docket No. 112) is **GRANTED**; and Plaintiffs’ Motion to Remand (Docket No. 23) is **GRANTED**. The remaining motions shall be refiled in Worcester Superior Court.

SO ORDERED.

/s/ Timothy S. Hillman

TIMOTHY S. HILLMAN
UNITED STATES DISTRICT JUDGE

EXHIBIT 1

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)	
PHILIP O. SHWACHMAN, et al.,)	No. 4:18-cv-40209-TSH
)	
Plaintiffs,)	
)	
v.)	
)	
TOWN OF HOPEDALE, et al.,)	
)	
Defendants.)	
_____)	

AGREEMENT FOR JUDGMENT

WHEREAS, Plaintiffs commenced a legal action against the Town of Hopedale, the Town of Hopedale Board of Selectmen, Thomas A. Wesley, Louis J. Arcudi, III, Brian R. Keyes, Steven A. Sette, Jason G. MacDonald, the Hopedale Downtown Revitalization Committee, the Hopedale Planning Board and Donald. W. Howes (collectively “Municipal Defendants”) along with other defendants on November 20, 2018 in the Commonwealth of Massachusetts Worcester County Superior Court styled as Shwachman, Philip O. et al. v. Town of Hopedale et al., No. 1885CV01781, (the “Action”);

WHEREAS, the Action was removed on December 18, 2018 to the United States District Court for the District of Massachusetts styled as Shwachman et al v. Town of Hopedale et al, No. 4:18-CV-40209-TSH;

WHEREAS, Plaintiffs filed their First Amended Complaint on January 30, 2019, restating their previous claims;

WHEREAS, the Plaintiffs and the Municipal Defendants attended Alternative Dispute Resolution on July 18, 2019, August 21, 2019 and October 31, 2019 where the Plaintiffs reached

an agreement with the Municipal Defendants and recited on the record the terms as memorialized below;

WHEREAS, the Plaintiffs and the Municipal Defendants have executed a Settlement Agreement resolving their disputes in this matter;

NOW, THEREFORE, it is agreed, by and between the Plaintiffs and the Municipal Defendants, that the Plaintiffs' claims against the Municipal Defendants only shall be settled and dismissed in their entirety with prejudice on the following terms:

1. **Production of Records**: The Municipal Defendants will provide within 60 days from signing this Agreement for Judgment, all documents regarding the URP or the G&U Railroad that were withheld from Plaintiffs under the Public Records Act on any ground other than attorney client privilege or work product, and a privilege log for all documents withheld based on attorney client privilege or work product, with regard to the following public records requests dated:

- a. July 20, 2018;
- b. November 14, 2018; and
- c. November 26, 2018.

2. **Urban Renewal Plan**: The Municipal Defendants agree to the full, public and complete withdrawal of the URP and termination of the current URP process, including the removal of all mentions of the draft URP from the Town of Hopedale's website.

3. **Master Planning Process**: Mr. Shwachman or a representative will be invited by the Town to be a member of (a) any citizens' committee that is formed as part of the master planning process that the Town is now undertaking as it relates to downtown redevelopment or economic development of underutilized property in Hopedale in consideration of rezoning, and

(b) any citizens' committee that is formed as part of any urban renewal plan process undertaken by the Town that may affect any of Plaintiffs' properties. The Town agrees that any such master planning or urban renewal process shall not be effectively run by G&U Railroad or its affiliates, employees or owner. The parties will endeavor to jointly work together in good faith toward a viable development plan of Mr. Shwachman's properties and neighboring Town properties in order to promote economic development in the downtown area. Mr. Shwachman agrees to allow inspection of the property on reasonable notice for purposes of such development plan, with prior approval by Mr. Shwachman regarding which individuals will be attending the inspection.

4. Payment: The Municipal Defendants will reimburse Plaintiffs' attorneys' fees in the amount of \$50,000 ("Settlement Amount"). The Settlement Amount will be paid within fourteen (14) business days of the execution of this Agreement for Judgment.

5. Hopedale Pond Dam: In lieu of additional reimbursement of Plaintiffs' attorneys' fees by the Municipal Defendants, the Town will enter into an agreement regarding the Hopedale Pond dam operated by Plaintiffs which has been encroached upon by the reconstruction of the Freedom Street bridge by the Town. The agreement (attached as **Exhibit A**) will include (a) an agreement to construct a replacement catwalk and replace stop log boards and mechanism on the pond side of the dam at the Town's sole cost, together with an agreement to provide access to the catwalk for operation of the dam; (b) assistance by the Town with operation of the Dam, made necessary by relocation of the catwalk from the opposite side of the Dam; and (c) removal of former stop log boards and mechanisms as proposed by Town's engineers BETA, Inc. in plans provided to Plaintiff.

6. Incorporation by Reference of the Settlement Agreement. The Plaintiffs and the Municipal Defendants hereby incorporate by reference all of the terms of the Settlement

Agreement (attached as **Exhibit B**) as if they were set forth fully herein, and stipulate that the Settlement Agreement shall survive entry of this Agreement for Judgment as an independent contract.

TOWN OF HOPEDALE,
TOWN OF HOPEDALE BOARD OF
SELECTMEN, THOMAS A. WESLEY,
LOUIS ARCUDI, III, BRIAN R.
KEYES, STEVEN SETTE, DOWNTOWN
REVITALIZATION COMMITTEE,
HOPEDALE PLANNING BOARD
JASON MACDONALD and
DONALD W. HOWES,

By their attorney,

/s/ Jeffrey T. Blake
Jeffrey T. Blake (BBO# 655773)
KP Law, P.C.
101 Arch Street, 12th Floor
Boston, MA 02110
(617)556-0007
jblake@k-plaw.com

Dated: January 21, 2020

Respectfully submitted,

PHILIP O. SHWACHMAN,
MATTHEW W. SHWACHMAN,
JUDITH L. SHWACHMAN,
HOPEDALE PROPERTIES, LLC, and
HOPEDALE INDUSTRIAL CENTER,
LLC

By their attorneys,

/s/ David E. Lurie
David E. Lurie (BBO #542030)
Harley C. Racer (BBO #688425)
Lurie Friedman LLP
One McKinley Square
Boston, MA 02109
Tel. 617-367-1970
dlurie@luriefriedman.com
hracer@luriefriedman.com

SO ORDERED:

Timothy S. Hillman, Judge

CERTIFICATE OF SERVICE

I hereby certify that this document was filed through the ECF system on January 21, 2020 and will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF).

/s/ Harley C. Racer
Harley C. Racer

EXHIBIT A

AGREEMENT REGARDING HOPEDALE POND DAM

This Agreement Regarding Hopedale Pond Dam (this “Agreement”) is entered into as of December 16, 2019 by and between Philip O. Shwachman; Hopedale Properties, LLC, a Massachusetts limited liability company with a principal place of business located at 100 MLK, Jr. Boulevard, Worcester, Massachusetts 01613, P.O. Box 646, Worcester, Massachusetts 01613-0646; and Hopedale Industrial Center, LLC, a Massachusetts limited liability company with a principal place of business located at 100 MLK, Jr. Boulevard, Worcester, Massachusetts 01613, P.O. Box 646, Worcester, Massachusetts 01613 (collectively “Shwachman”), and the Town of Hopedale (the “Town”). The entities referred to herein are sometimes individually referred to as a “Party” and sometimes collectively referred to as the “Parties.”

RECITALS

WHEREAS, Shwachman owns property abutting Hopedale Pond Dam (the “Dam”) in the Town of Hopedale;

WHEREAS, Shwachman owns certain water rights to the Hopedale Pond, including the water that passes through and over the Dam;

WHEREAS, Shwachman operates the Dam mechanisms and the water levels of the Hopedale Pond through the seasonal and occasional removal and replacement of a series of stop log boards on top of the Dam;

WHEREAS, the Town rebuilt and expanded the Freedom St. bridge, encroaching onto Shwachman’s property and preventing access to critical portions of the catwalk previously utilized to access the Dam and the stop log board mechanism;

WHEREAS, the expanded Freedom St. bridge prevents Shwachman from safely accessing the Dam and maintaining desired water levels of Hopedale Pond from his property.

NOW, THEREFORE, it is agreed, by and between Shwachman and the Town that this issue concerning the Dam shall be resolved and settled on the following terms:

1. Replacement Catwalk: The Town, at the Town’s sole cost, will construct a replacement catwalk, remove the former stop log boards and mechanisms and replace stop log boards and mechanism on the pond side of the Dam, as proposed by Town’s engineers BETA, Inc. in conceptual plans provided to Shwachman, attached hereto as **Exhibit A**.

2. Easement: Once final construction drawings are prepared and construction of the replacement catwalk has been completed, the Town will present a request to Town Meeting to grant an easement to Shwachman to the replacement catwalk for access to and for operation of the Dam. Such easement shall be in recordable form mutually agreeable to the Parties. The Board of Selectmen shall support the request for the Easement at Town Meeting. In the event that the Town does not vote to grant said easement, the Town shall issue a perpetual license to access the replacement catwalk and shall not terminate the

license except upon a material change to the Dam or surrounding area such that Shwachman no longer has a need to access the replacement catwalk for access to and for operation of the Dam.

3. Assistance with Operation of the Dam. The Town will provide to Shwachman additional personnel and equipment from the Hopedale Highway Department twice a year and as needed for, from time to time, and in case of emergencies to accomplish operations of the replacement stop log boards and mechanism on the pond side of the Dam, caused by relocation of the catwalk from the opposite side of the Dam.

4. Further Acts: Each of the Parties to this Agreement agree to perform any further acts and execute and deliver any documents that may be reasonably necessary to carry out the provisions contained in this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, and in agreement herewith, the Parties through their respective, duly authorized counsel have executed and delivered this Agreement as of the date first above written.



PHILIP O. SHWACHMAN



HOPEDALE PROPERTIES, LLC, and
HOPEDALE INDUSTRIAL CENTER, LLC by
Philip O. Shwachman, President of their
Managers

TOWN OF HOPEDALE,
TOWN OF HOPEDALE BOARD OF
SELECTMEN by

IN WITNESS WHEREOF, and in agreement herewith, the Parties through their respective, duly authorized counsel have executed and delivered this Agreement as of the date first above written.

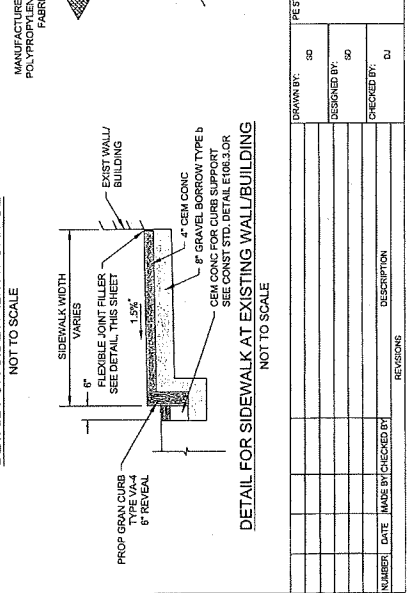
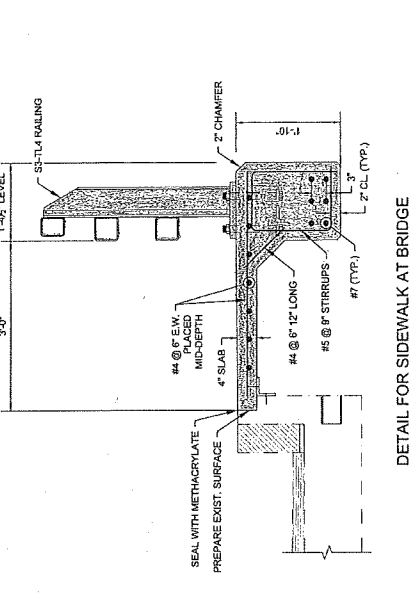
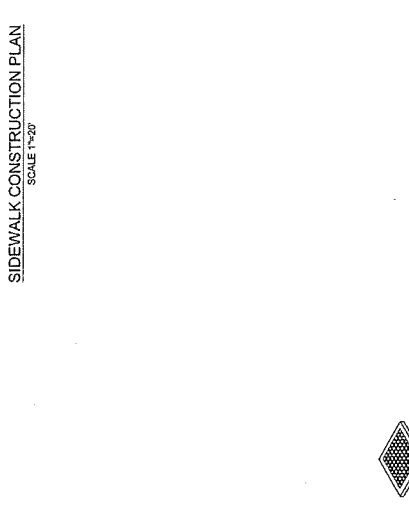
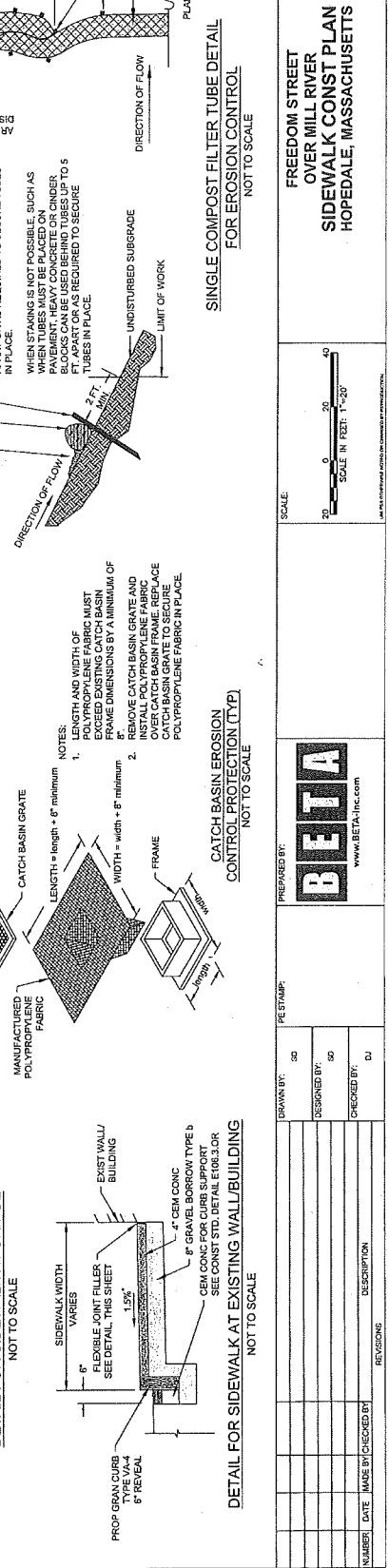
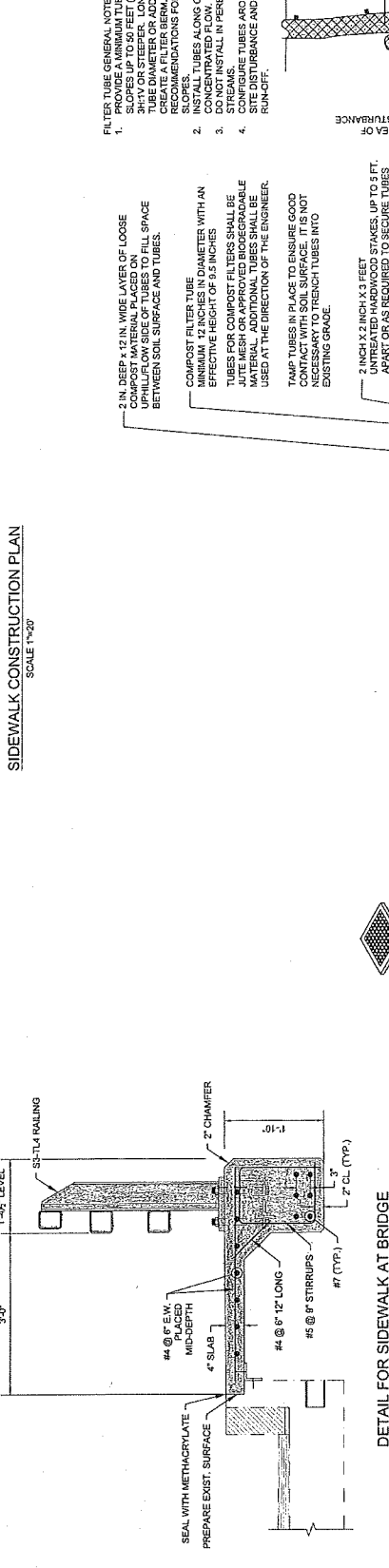
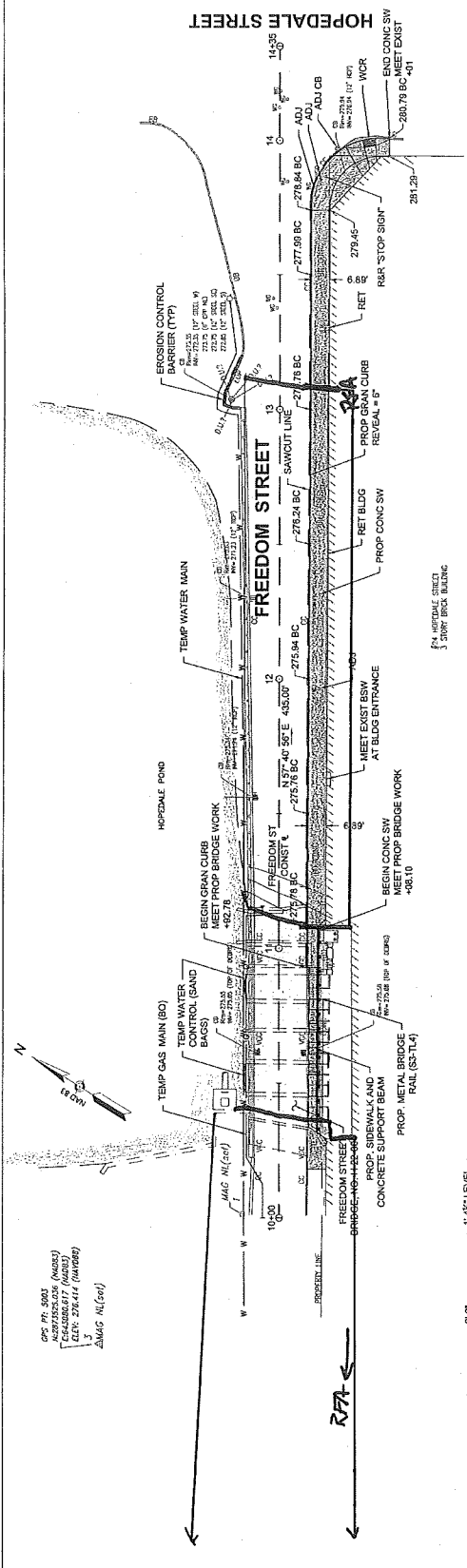
PHILIP O. SHWACHMAN

HOPEDALE PROPERTIES, LLC, and
HOPEDALE INDUSTRIAL CENTER, LLC by
Philip O. Shwachman, President of their
Managers



TOWN OF HOPEDALE,
TOWN OF HOPEDALE BOARD OF
SELECTMEN by

Exhibit A



FILTER TUBE GENERAL NOTES:
1. PROVIDE A MINIMUM TUBE DIAMETER OF 12 INCHES (300mm) FOR SLOPES UP TO 5% FEET (1524mm) IN LENGTH WITH A SLOPE RATIO OF 1:1. FOR SLOPES GREATER THAN 5% FEET (1524mm) IN LENGTH, INCREASE TUBE DIAMETER OR ADDITIONAL COARSING OF FILTER TUBES TO CREATE A FILTER BERM. REFER TO MANUFACTURER'S RECOMMENDATIONS FOR SITUATIONS WITH LONGER OR STEEPER CONCENTRATED FLOW.
2. INSTALL TUBES ALONG CONTOURS AND PERPENDICULAR TO SHEET OR STRIPES.
3. DO NOT INSTALL IN PERENNIAL EPHEMERAL OR INTERMITTENT STREAMS.
4. CONFIGURE TUBES AROUND EXISTING SITE FEATURES TO MINIMIZE SITE DISTURBANCE AND MAXIMIZE CAPTURE AREA OF STORMWATER RUNOFF.

PREPARED BY: BETA
DESIGNED BY: BETA
CHECKED BY: DU

SCALE: 1"=20'

SCALE: 1"=20'

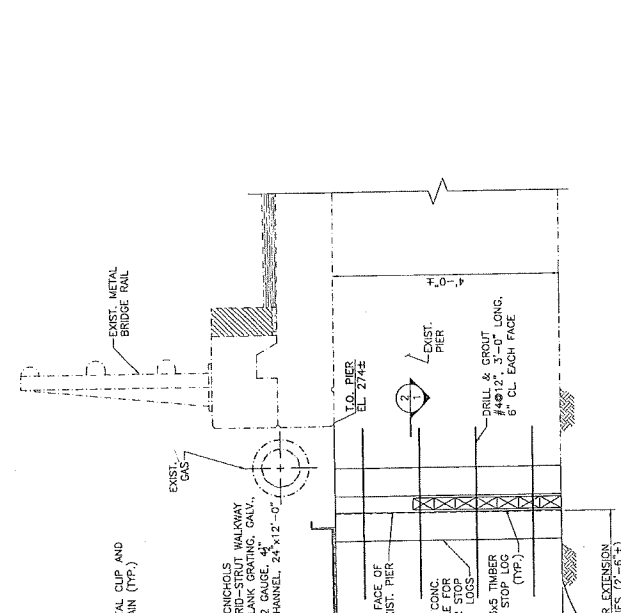
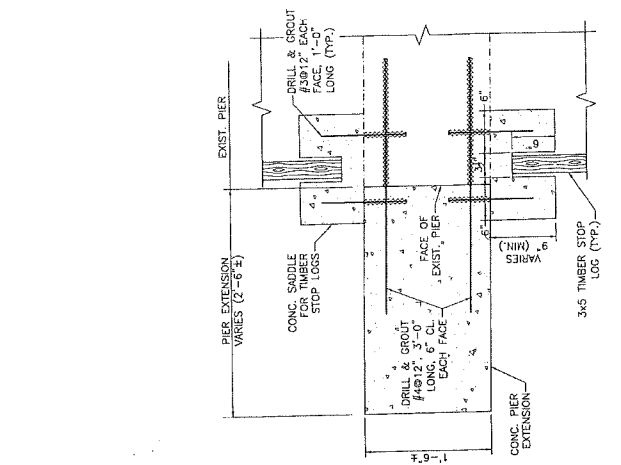
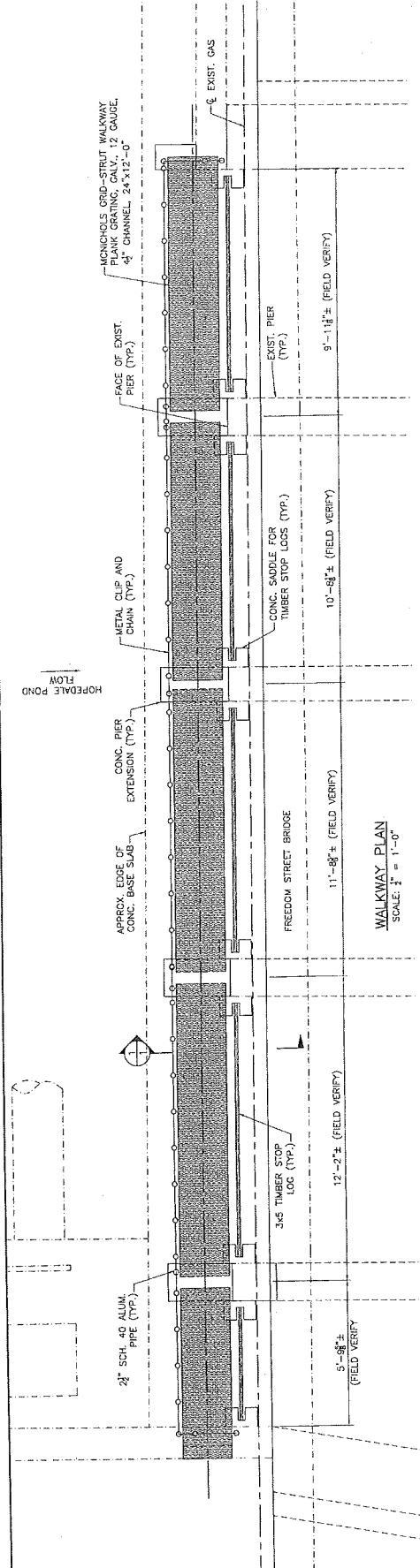
SCALE: 1"=20'

BETA
www.BETA-inc.com

REVISIONS

NUMBER	DATE	MADE BY/CHECKED BY	DESCRIPTION

PROJECT: FREEDOM STREET - HOPDALE STREET
SHEET NO.: 1 OF 1
DATE: 6/20/19 2:52 PM
ISSUE DATE: 6/20/19 2:52 PM
SCALE: 1"=20'



BETA JOB NO. 577		ISSUE DATE		SHEET NO. 1	
FREEDOM STREET OVER HOPEDALE POND HOPEDALE, INA WALKWAY ADDITION					
SUBCONSULTANT		SCALE		TITLE	
AS SHOWN		AS SHOWN		AS SHOWN	
For Review Only REGISTERED PROFESSIONAL PREPARED BY BETA www.BETA-Inc.com			SUBCONSULTANT SCALE TITLE		
DESIGNED BY	DATE	DESIGNED BY	DATE	DESIGNED BY	DATE
CHECKED BY		CHECKED BY		CHECKED BY	
INITIALS		INITIALS		INITIALS	
NUMBER	DATE	MADE BY	CHECKED BY	NUMBER	DATE

Optim R

STEEL

1. ALL STEEL SHALL CONFORM TO AASHTO M 270 GRADE 36.
2. ALL STEEL SHALL BE HOT DIP GALVANIZED TO CONFORM TO AASHTO-M11. GALVANIZED NUMBERS THAT ARE TO BE WELDED AFTER GALVANIZING SHALL BE MASKED 1
3. GALVANIZED NUMBERS THAT ARE TO BE WELDED AFTER GALVANIZING SHALL BE MASKED 1 FLANGE SHALL BE MASKED ITS FULL WIDTH AND LENGTH.

1. ALL TIMBER SHALL BE PRESSURE TREATED AS PER AASHTO SPECIFICATION M133.
2. ALL TREATED TIMBER THAT IS FIELD CUT, EGGED THRU, DRILLED INTO OR DAMAGED SHALL BE NOTED, AND SHALL COMPLY WITH THE REQUIREMENTS OF AASHTO M188.
3. SAWN LUMBER SHALL BE PRESSURE TREATED WITH ACQ CONFORMING TO AWP, STANDARD P5. ALL MEMBERS SHALL BE FABRICATED BEFORE TREATMENT AND DRIED TO A MOISTURE CONTENT OF 19 PERCENT OR LESS AFTER TREATMENT.
4. ALL TIMBER SHALL BE PREDRILLED PRIOR TO TREATMENT.
5. BENT GAPS, JOISTS, BLOCKING, AND SPACERS SHALL BE SOUTHERN PINE, GRADE NO. 1 OR GREATER.
6. ALL TREATED TIMBER THAT IS FIELD CUT, EGGED THRU, DRILLED INTO OR DAMAGED SHALL BE NOTED, AND SHALL COMPLY WITH THE REQUIREMENTS OF AASHTO M188.
7. ALL BOLTS SHALL BE HIGH STRENGTH ASTM A307, UNLESS OTHERWISE NOTED. LAG SCREW SHALL COMPLY WITH THE REQUIREMENTS OF ANSI/ASME STANDARD B19.2.1, GRADE 2.
8. ALL HARDWARE SHALL BE GALVANIZED AS PER CURRENT STATE SPECIFICATIONS AND/OR AASHTO SPECIFICATION M232.
9. CONSTRUCTION REQUIREMENTS SHALL CONFORM TO STATE SPECIFICATIONS. ALL TIMBER SHALL BE CUT TO LENGTH AND DRESSED TO SIZE REQUIRED PRIOR TO TREATMENT.
10. TIMBER WHICH AT THE DISCRETION OF THE ENGINEER IS SEVERELY WARPED, BOWED, SPLIT, OR SPUNKTERED SHALL NOT BE INCORPORATED IN THE WORK.
11. TIMBER RAIL POST SHALL BE SET VERTICAL IN THE FIELD.
12. TIMBER RAILS SHALL BE ATTACHED PARALLEL TO THE ACTUAL SLOPE OF DECK.
13. RAILS SHALL BE CONTINUOUS OVER TWO POSTS SPACING (MINIMUM).

BETA www.BETA-Int.com	For Review Only	REGISTERED PROFESSIONAL ENGINEER PREPARED BY	DRAWN BY BWN	DESIGNED BY INITIALS	CHECKED BY INITIALS	REVISIONS
FREEDOM STREET OVER HOPEDALE POND HOPEDALE, MA NOTES						
AS SHOWN						
SCALE: _____						
TITLE: _____						
BETA PROJ. NO. 5275						
ISSUE DATE: _____						
SHEET NO. 2 OF 2						

EXHIBIT B

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release (this “Agreement”) is entered into as of December 16, 2019 by and between Philip O. Shwachman; Matthew W. Shwachman; Judith L. Shwachman; Hopedale Properties, LLC, a Massachusetts limited liability company with a principal place of business located at 100 MLK, Jr. Boulevard, Worcester, Massachusetts 01613, P.O. Box 646, Worcester, Massachusetts 01613-0646; and Hopedale Industrial Center, LLC, a Massachusetts limited liability company with a principal place of business located at 100 MLK, Jr. Boulevard, Worcester, Massachusetts 01613, P.O. Box 646, Worcester, Massachusetts 01613 (collectively “Plaintiffs”), and Town of Hopedale, the Town of Hopedale Board of Selectmen, Thomas A. Wesley, Louis J. Arcudi, III, Brian R. Keyes, Steven A. Sette, Jason G. MacDonald, the Hopedale Downtown Revitalization Committee, the Hopedale Planning Board and Donald. W. Howes (collectively “Municipal Defendants”). The entities referred to herein are sometimes individually referred to as a “Party” and sometimes collectively referred to as the “Parties.”

RECITALS

WHEREAS, Plaintiffs commenced a legal action against the Town of Hopedale, the Town of Hopedale Board of Selectmen, Thomas A. Wesley, Louis J. Arcudi, III, Brian R. Keyes, Steven A. Sette, Jason G. MacDonald, the Hopedale Downtown Revitalization Committee, the Hopedale Planning Board and Donald. W. Howes (collectively “Municipal Defendants”) along with other defendants on November 20, 2018 in the Commonwealth of Massachusetts Worcester County Superior Court styled as Shwachman, Philip O. et al. v. Town of Hopedale et al., No. 1885CV01781, (the “Action”);

WHEREAS, the Action was removed on December 18, 2018 to the United States District Court for the District of Massachusetts styled as Shwachman et al v. Town of Hopedale et al., No. 4:18-CV-40209-TSH;

WHEREAS, Plaintiffs filed their First Amended Complaint on January 30, 2019, restating their previous claims;

WHEREAS, the Plaintiffs and the Municipal Defendants attended Alternative Dispute Resolution on July 18, 2019, August 21, 2019 and October 31, 2019 where the Plaintiffs reached an agreement with the Municipal Defendants and recited on the record the terms as memorialized below;

NOW, THEREFORE, it is agreed, by and between the Plaintiffs and the Municipal Defendants, that the Plaintiffs’ claims against the Municipal Defendants only shall be settled and dismissed in their entirety with prejudice on the following terms:

1. Production of Records: The Municipal Defendants will provide within 60 days from signing this Settlement Agreement, all documents regarding the URP or the G&U Railroad that were withheld from Plaintiffs under the Public Records Act on any ground

other than attorney client privilege or work product, and a privilege log for all documents withheld based on attorney client privilege or work product, with regard to the following public records requests dated:

- a. July 20, 2018;
- b. November 14, 2018; and
- c. November 26, 2018.

2. **Urban Renewal Plan**: The Municipal Defendants agree to the full, public and complete withdrawal of the URP and termination of the current URP process, including the removal of all mentions of the draft URP from the Town of Hopedale's website.

3. **Master Planning Process**: Mr. Shwachman or a representative will be invited by the Town to be a member of (a) any citizens' committee that is formed as part of the master planning process that the Town is now undertaking as it relates to downtown redevelopment or economic development of underutilized property in Hopedale in consideration of rezoning, and (b) any citizens' committee that is formed as part of any urban renewal plan process undertaken by the Town that may affect any of Plaintiffs' properties. The Town agrees that any such master planning or urban renewal process shall not be effectively run by G&U Railroad or its affiliates, employees or owner. The parties will endeavor to jointly work together in good faith toward a viable development plan of Mr. Shwachman's properties and neighboring Town properties in order to promote economic development in the downtown area. Mr. Shwachman agrees to allow inspection of the property on reasonable notice for purposes of such development plan, with prior approval by Mr. Shwachman regarding which individuals will be attending the inspection.

4. **Payment**: The Municipal Defendants will reimburse Plaintiffs' attorneys' fees in the amount of \$50,000 ("Settlement Amount"). The Settlement Amount will be paid within fourteen (14) business days of the execution of this Settlement Agreement.

5. **Hopedale Pond Dam**: In lieu of additional reimbursement of Plaintiffs' attorneys' fees by the Municipal Defendants, the Town will enter into an agreement regarding the Hopedale Pond dam operated by Plaintiffs which has been encroached upon by the reconstruction of the Freedom Street bridge by the Town. The agreement (attached as **Exhibit A**) will include (a) an agreement to construct a replacement catwalk and replace stop log boards and mechanism on the pond side of the dam at the Town's sole cost, together with an agreement to provide access to the catwalk for operation of the dam; (b) assistance by the Town with operation of the Dam, made necessary by relocation of the catwalk from the opposite side of the Dam; and (c) removal of former stop log boards and mechanisms as proposed by Town's engineers BETA, Inc. in plans provided to Plaintiff.

6. **Agreement of Judgment**: The Parties, through their counsel, will execute and file a mutually acceptable Agreement of Judgment reflecting the terms of this Settlement Agreement and take any steps needed to have the agreement entered by the Court.

7. Mutual Releases:

- a. **The Municipal Defendants' Release:** In consideration of the covenants, representations and promises set forth in this Settlement Agreement from the Plaintiffs, which covenants, promises and representations survive this Release, the Municipal Defendants hereby release the Plaintiffs and their representatives, agents, attorneys, employees, directors, officers, shareholders, members, managers, affiliates, subsidiaries, divisions, agents, successors, and assigns (together, the "Plaintiff Releasees") from any and all actions, causes of action, suits, debts, charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, and expenses (including attorneys' fees and costs actually incurred), of any nature whatsoever, in law or equity, known or unknown, which the Municipal Defendants had or have against any of the Plaintiff Releasees relating to the subject-matter of this Action and/or the Urban Renewal Plan. The Municipal Defendants specifically reserve their rights to seek enforcement of this Settlement Agreement.
- b. **Plaintiffs' Release:** In consideration of the covenants, representations and promises set forth in this Settlement Agreement from the Municipal Defendants, which covenants, promises and representations survive this Release, the Plaintiffs hereby release the Municipal Defendants and their representatives, agents, attorneys, employees, directors, officers, shareholders, members, managers, affiliates, subsidiaries, divisions, agents, successors, and assigns (together, the "Municipal Releasees") from any and all actions, causes of action, suits, debts, charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, and expenses (including attorneys' fees and costs actually incurred), of any nature whatsoever, in law or equity, known or unknown, which the Plaintiffs had or have against any of the Municipal Releasees relating to the subject-matter of this Action and/or the Urban Renewal Plan. Specifically excluded from Plaintiffs' Release are any matters other than matters relating to this Action and the Urban Renewal Plan. The Plaintiffs specifically reserve their rights to seek enforcement of this Settlement Agreement.

8. Attorneys' Fees and Expenses: The Parties agree that, other than the Settlement Amount, each will bear all of the costs and expenses which it has incurred or shall incur, including, without limitation, attorneys' fees, which are in any way related to, or connected with or arise from, the filing, prosecution, negotiation or defense of the Action and/or the negotiation, drafting, execution or implementation of this Agreement.

9. Severability: The provisions of this Agreement are severable and should any provision be for any reason unenforceable, the balance shall nonetheless be of full force and effect.

10. Construction: Each Party has had a full and complete opportunity to review this Agreement, as has counsel for each Party. Accordingly, the Parties agree that the

common-law principles of construing ambiguities against the drafter shall have no application hereto. It should be construed fairly and not in favor of or against one Party as the drafter hereof.

11. Governing Law: This Agreement shall in all respects be interpreted, enforced and governed by and under the laws of the Commonwealth of Massachusetts.

12. Complete Bar: The mutual release as set forth in Paragraph 8 may be asserted as a defense and complete bar to any action, claim, cross-claim, cause of action, demand, arbitration, or other proceeding that may be brought, instituted, or asserted by the Municipal Defendants or Plaintiffs or anyone acting or purporting to act on behalf of the Municipal Defendants or Plaintiffs, excepting an action by any Party to enforce the terms of this Agreement and any matters other than matters relating to this Action and the Urban Renewal Plan.

13. Amendment: Except by a further written agreement signed by the Parties: (a) this Agreement may not be amended, altered, modified or changed in any way; and (b) no waiver, forbearance or failure to enforce any provision of this Agreement will be deemed to be a waiver of any right with respect to any other occurrence or with respect to any other provision hereof.

14. Representation by Counsel: Each Party represents and warrants that it has been represented by independent counsel of its own choice throughout all negotiations that preceded the execution of this Agreement. Each Party further represents and warrants that the contents of this Agreement have been explained to it by its counsel, and that this Agreement is executed voluntarily and with full knowledge of its significance.

15. Execution of Agreement: Each Party warrants and represents that it has the capacity, right and authority to execute this Agreement.

16. Effectiveness of Agreement: This Agreement shall become effective as of the date first written above.

17. Entire Agreement: This Agreement is the entire agreement among the Parties with reference to the subject matter hereof and all prior negotiations and understandings among the Parties, written or oral, pertaining to the subject matter hereof, have been merged herein. The Parties acknowledge that no representation or promise not expressly contained in this Agreement has been made, and further acknowledge that they are not entering into this Agreement in reliance upon any promise or representation, express or implied, other than those expressly contained in this Agreement.

18. Enforcement: It is further understood and agreed that if, at any time, a violation of any term of this Agreement is asserted by any Party, that Party shall have the right (except as may be expressly provided elsewhere in this Agreement) to seek specific performance of that term and/or any other necessary and proper relief, including but not limited to damages. Venue for such action shall be exclusively in the United States District Court for the District of Massachusetts. The prevailing Party in any such action shall be entitled to recover its reasonable costs and attorneys' fees.

19. Counterpart Execution: This Agreement may be executed in any number of counterparts and will be binding when it has been executed and delivered by the last signatory hereto to execute a counterpart. A facsimile signature or signature emailed in pdf form shall be deemed to constitute an original signature for purposes of this Agreement.

20. Headings: Headings contained in this Agreement are for the convenience of reference only and are not intended to alter or vary the construction and meaning of this Agreement.


21. Further Acts: Each of the Parties to this Agreement agree to perform any further acts and execute and deliver any documents that may be reasonably necessary to carry out the provisions contained in this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, and in agreement herewith, the Parties through their respective, duly authorized counsel have executed and delivered this Agreement as of the date first above written.




PHILIP O. SHWACHMAN



HOPEDALE PROPERTIES, LLC, and
HOPEDALE INDUSTRIAL CENTER, LLC by
its President, Philip O. Shwachman

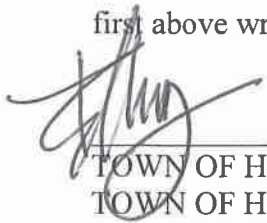


MATTHEW W. SHWACHMAN



JUDITH L. SHWACHMAN

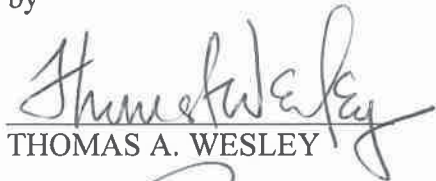
IN WITNESS WHEREOF, and in agreement herewith, the Parties through their respective, duly authorized counsel have executed and delivered this Agreement as of the date first above written.



TOWN OF HOPEDALE,
TOWN OF HOPEDALE BOARD OF SELECTMEN by

HOPEDALE PLANNING BOARD by

DOWNTOWN REVITALIZATION COMMITTEE
by



THOMAS A. WESLEY



LOUIS J. ARCUDI, III,



BRIAN R. KEYES



STEVEN A. SETTE



JASON MACDONALD



DONALD W. HOWES

IN WITNESS WHEREOF, and in agreement herewith, the Parties through their respective, duly authorized counsel have executed and delivered this Agreement as of the date first above written.

TOWN OF HOPEDALE,
TOWN OF HOPEDALE BOARD OF SELECTMEN by



HOPEDALE PLANNING BOARD by *Fatherless Lodge Oliver 1/10/20*

DOWNTOWN REVITALIZATION COMMITTEE
by

THOMAS A. WESLEY

LOUIS J. ARCUDI, III,

BRIAN R. KEYES

STEVEN A. SETTE

JASON MACDONALD

DONALD W. HOWES

EXHIBIT A

AGREEMENT REGARDING HOPEDALE POND DAM

This Agreement Regarding Hopedale Pond Dam (this “Agreement”) is entered into as of December 16, 2019 by and between Philip O. Shwachman; Hopedale Properties, LLC, a Massachusetts limited liability company with a principal place of business located at 100 MLK, Jr. Boulevard, Worcester, Massachusetts 01613, P.O. Box 646, Worcester, Massachusetts 01613-0646; and Hopedale Industrial Center, LLC, a Massachusetts limited liability company with a principal place of business located at 100 MLK, Jr. Boulevard, Worcester, Massachusetts 01613, P.O. Box 646, Worcester, Massachusetts 01613 (collectively “Shwachman”), and the Town of Hopedale (the “Town”). The entities referred to herein are sometimes individually referred to as a “Party” and sometimes collectively referred to as the “Parties.”

RECITALS

WHEREAS, Shwachman owns property abutting Hopedale Pond Dam (the “Dam”) in the Town of Hopedale;

WHEREAS, Shwachman owns certain water rights to the Hopedale Pond, including the water that passes through and over the Dam;

WHEREAS, Shwachman operates the Dam mechanisms and the water levels of the Hopedale Pond through the seasonal and occasional removal and replacement of a series of stop log boards on top of the Dam;

WHEREAS, the Town rebuilt and expanded the Freedom St. bridge, encroaching onto Shwachman’s property and preventing access to critical portions of the catwalk previously utilized to access the Dam and the stop log board mechanism;

WHEREAS, the expanded Freedom St. bridge prevents Shwachman from safely accessing the Dam and maintaining desired water levels of Hopedale Pond from his property.

NOW, THEREFORE, it is agreed, by and between Shwachman and the Town that this issue concerning the Dam shall be resolved and settled on the following terms:

1. Replacement Catwalk: The Town, at the Town’s sole cost, will construct a replacement catwalk, remove the former stop log boards and mechanisms and replace stop log boards and mechanism on the pond side of the Dam, as proposed by Town’s engineers BETA, Inc. in conceptual plans provided to Shwachman, attached hereto as **Exhibit A**.

2. Easement: Once final construction drawings are prepared and construction of the replacement catwalk has been completed, the Town will present a request to Town Meeting to grant an easement to Shwachman to the replacement catwalk for access to and for operation of the Dam. Such easement shall be in recordable form mutually agreeable to the Parties. The Board of Selectmen shall support the request for the Easement at Town Meeting. In the event that the Town does not vote to grant said easement, the Town shall issue a perpetual license to access the replacement catwalk and shall not terminate the

license except upon a material change to the Dam or surrounding area such that Shwachman no longer has a need to access the replacement catwalk for access to and for operation of the Dam.

3. Assistance with Operation of the Dam. The Town will provide to Shwachman additional personnel and equipment from the Hopedale Highway Department twice a year and as needed for, from time to time, and in case of emergencies to accomplish operations of the replacement stop log boards and mechanism on the pond side of the Dam, caused by relocation of the catwalk from the opposite side of the Dam.

4. Further Acts: Each of the Parties to this Agreement agree to perform any further acts and execute and deliver any documents that may be reasonably necessary to carry out the provisions contained in this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, and in agreement herewith, the Parties through their respective, duly authorized counsel have executed and delivered this Agreement as of the date first above written.



PHILIP O. SHWACHMAN



HOPEDALE PROPERTIES, LLC, and
HOPEDALE INDUSTRIAL CENTER, LLC by
Philip O. Shwachman, President of their
Managers

TOWN OF HOPEDALE,
TOWN OF HOPEDALE BOARD OF
SELECTMEN by

IN WITNESS WHEREOF, and in agreement herewith, the Parties through their respective, duly authorized counsel have executed and delivered this Agreement as of the date first above written.

PHILIP O. SHWACHMAN

HOPEDALE PROPERTIES, LLC, and
HOPEDALE INDUSTRIAL CENTER, LLC by
Philip O. Shwachman, President of their
Managers



TOWN OF HOPEDALE,
TOWN OF HOPEDALE BOARD OF
SELECTMEN by

Exhibit A

- TIMBER**
1. ALL TIMBER SHALL BE PRESSURE TREATED AS PER AASHTO SPECIFICATION M133.
 2. ALL TREATED TIMBER THAT IS FIELD CUT, EGGED, THRU, DRILLED INTO OR DAMAGED SHALL BE NOTED, AND SHALL COMPLY WITH THE REQUIREMENTS OF AASHTO M188.
 3. SAWN LUMBER SHALL BE PRESSURE TREATED WITH ACQ CONFORMING TO AWP, STANDARD P5. ALL MEMBERS SHALL BE FABRICATED BEFORE TREATMENT AND DRIED TO A MOISTURE CONTENT OF 19 PERCENT OR LESS AFTER TREATMENT.
 4. ALL TIMBER SHALL BE PREDRILLED PRIOR TO TREATMENT.
 5. BENT GAPS, JOISTS, BLOCKING, AND SPACERS SHALL BE SOUTHERN PINE, GRADE NO. 1 OR GREATER.
 6. ALL TREATED TIMBER THAT IS FIELD CUT, EGGED, THRU, DRILLED INTO OR DAMAGED SHALL BE NOTED, AND SHALL COMPLY WITH THE REQUIREMENTS OF AASHTO M188.
 7. ALL BOLTS SHALL BE HIGH STRENGTH ASTM A307, UNLESS OTHERWISE NOTED. LAG SCREW SHALL COMPLY WITH THE REQUIREMENTS OF ANSI/ASME STANDARD B19.2.1, GRADE 2.
 8. ALL HARDWARE SHALL BE GALVANIZED AS PER CURRENT STATE SPECIFICATIONS AND/OR AASHTO SPECIFICATION M232.
 9. CONSTRUCTION REQUIREMENTS SHALL CONFORM TO STATE SPECIFICATIONS. ALL TIMBER SHALL BE CUT TO LENGTH AND DRESSED TO SIZE REQUIRED PRIOR TO TREATMENT.
 10. TIMBER WHICH AT THE DISCRETION OF THE ENGINEER IS SEVERELY WARPED, BOWED, SPLIT, OR SPUNKTERED SHALL NOT BE INCORPORATED IN THE WORK.
 11. TIMBER RAIL POST SHALL BE SET VERTICAL IN THE FIELD.
 12. TIMBER RAILS SHALL BE ATTACHED PARALLEL TO THE ACTUAL SLOPE OF DECK.
 13. RAILS SHALL BE CONTINUOUS OVER TWO POSTS SPACING (MINIMUM).

STEEL

1. ALL STEEL SHALL CONFORM TO AASHTO M 270 GRADE 36.
2. ALL STEEL SHALL BE HOT DIP GALVANIZED TO CONFORM TO AASHTO-M11.
3. GALVANIZED MEMBERS THAT ARE TO BE WELDED AFTER GALVANIZING SHALL BE MASKED 1 FEET FROM ALL SIDES OF THE WELD LINE PRIOR TO GALVANIZING. THE TOP OF THE TOP FLANGE SHALL BE MASKED ITS FULL WIDTH AND LENGTH.


BETA, INC. NO. 5275 ISSUE DATE: 08/28/2018 SHEET NO. 2 OF 2	
FREEDOM STREET OVER HOPEDALE POND HOPEDALE, MA NOTES	
SCALE	TITLE
AS SHOWN	
SUBSEQUENT DATE:	
REGISTERED PROFESSIONAL ENGINEER PREPARED BY:	
For Review Only	
 www.BETA-INC.com	
DRAWN BY: BWN DESIGNED BY: [] CHECKED BY: [] INITIALS: []	REVISIONS:
NUMBER: [] DATE: [] MADE BY: [] CHECKED BY: []	

EXHIBIT 2

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

<hr/>	
PHILLIP O. SHWACHMAN, MATTHEW W.)
SCWACHMAN, JUDITY L. SCWACHMAN,)
HOPEDALE PROPERTIES, LLC, and)
HOPEDALE INDUSTRIAL CENTER)
Plaintiff,)
v.)
)
)
TOWN OF HOPEDALE, TOWN OF)
HOPEDALE BOARD OF SELECTMEN,)
THOMAS A. WESLEY, LOUIS J. ARCUDI,)
III, BRIAN R. KEYES, STEVEN A. SETTE,)
GRAFTON & UPTON RAILROAD,)
JON DELLI PRISCOLI, MICHAEL D.)
MILANOSKI, JASON G. MACDONALD,)
FIRST COLONY GROUP, LLC,)
DRAPER FALLS, LLC, LOBISSER)
BUILDING CORP., KEVIN LOBISSER,)
HOPEDALE HOUSING AUTHORITY,)
HOPEDALE DOWNTOWN)
REVITALIZATION COMMITTEE,)
HOPEDALE PLANNING BOARD, and)
DONALD W. HOWES,)
Defendants.)
<hr/>	

CIVIL ACTION
No. 18-40209-TSH

**MEMORANDUM OF DECISION AND ORDER ON PLAINTIFFS’ MOTION FOR
REMAND, PLAINTIFFS’ MOTION TO DISMISS COUNTS XI AND XII AND
JOINT MOTION FOR ENTRY OF JUDGMENT**

May 19, 2021

HILLMAN, D.J.

Plaintiffs Philip O. Shwachman, Hopedale Properties, LLC, and Hopedale Industrial Center, LLC (collectively, “Plaintiffs”) brought this action in Massachusetts Superior Court, Worcester County, on November 21, 2018, asserting state and federal claims against Defendants the Town

of Hopedale, the Town of Hopedale Board of Selectmen, Thomas A. Wesley, Louis J. Arcudi, III, Brian R. Keyes, Steven A. Sette, Jason G. MacDonald, the Hopedale Downtown Revitalization Committee, the Hopedal Housing Authority, the Hopedale Planning Board and Donald. W. Howes (collectively “Municipal Defendants”); the Grafton & Upton Railroad Company (“G&U”), Jon Delli Priscoli (“Delli Priscoli”), First Colony, LLC (“First Colony”), and Michael Milanoski (“Milanoski”) (collectively, the “Railroad Defendants”); Defendants Kevin Lobisser; Lobisser Building Corp.; Draper Falls, LLC (collectively, the Lobisser Defendants”). The claims involved the process by which Defendants attempted to redevelop large parcels of land and empty buildings owned by Plaintiffs in the Town of Hopedale.¹

The Defendants removed the action to this Court on December 19, 2018. The first ten Counts of the Complaint bring state law claims for equitable relief against the Municipal parties. The Complaint alleges, in Counts I through X, that the Defendants engaged in intentional and repeated violations of state laws that are designed to promote transparency, openness and honesty in municipal government, including serial violations of M.G.L. c. 30A, § 23 (the Open Meeting Law), M.G.L. c. 66 (the Public Records Law), state rules and guidelines regarding the public bidding process, M.G.L. c. 268A (conflict of interest statute), and M.G.L. c. 121B (the state urban renewal statute). There are two Counts brought under 42 U.S.C. § 1983. Count XI alleges violations of the Shwachman Plaintiffs’ rights under the First Amendment of the United State Constitution as well as substantive and procedural due process rights under the Fifth and Fourteenth Amendments. Count XII alleges a violation of the Fourteenth Amendment’s right to equal protection.

¹ Plaintiffs Matthew W. Shwachman and Judith L. Shwachman are no longer parties to the action, having joined only in the now-resolved Open Meeting Law claim, Count IX, against some of the Municipal Defendants.

The Railroad Defendants removed the action to federal court on December 19, 2018. (Docket No. 1). On January 17, 2019, Plaintiffs moved for remand back to Superior Court. (Docket No. 23). Plaintiffs' motion for remand remains pending. Following three days of Court-ordered mediation conducted by Magistrate Judge Marianne Bowler, Plaintiffs resolved their claims involving the Municipal and Lobisser Defendants, leaving only six claims, Counts XI through XVI against the Railroad Defendants as the sole remaining defendants. Counts XI and XII are federal civil rights claims and the remaining four are state claims.

Before the Court are six motions: the Schwachman Plaintiffs' Motion to Remand (Docket No. 23); the Railroad Defendants' Special Motion to Dismiss the six counts against them under the Massachusetts Anti-SLAPP statute (Docket No. 30), specifically, Count XI (§ 1983 substantive and procedural due process violations of the First, Fifth and Fourteenth Amendments of the United States Constitution,); Count XII (§ 1983 Equal Protection violations of the Fourteenth Amendment to the United States Constitution); Count XIII (Massachusetts Civil Rights Act, "MCRA"); Count XIV (M.G.L. c. 93A); Count XV (tortious interference with advantageous business relationships); and Count XVI (civil conspiracy); Defendant Michael Milanoski's Special Motion to Dismiss under the Anti_SLAPP statute (Docket No. 37); the Schwachman-Municipal Joint Motion for Entry of Judgment (Docket No. 106); Plaintiffs' Motion to Dismiss Plaintiffs' Counts XI and XII (Docket No. 112); and the Railroad Defendants' Joint Motion for Judgment on the Pleadings (Docket 113).

Motion for Entry of Judgment

Plaintiffs and the Municipal Defendants negotiated an Agreement for Judgment (the "Agreement"), resolving this matter as to all of Plaintiffs' claims against the Municipal Defendants. They have asked the Court to approve the Agreement and enter the Judgment,

leaving the six claims against the Railroad Defendants. The Railroad Defendants oppose approval of the Agreement for Judgment on the grounds that it is unlawful and unenforceable. Defendants also argue that the Court should not enter separate and final judgment under Fed. R. Civ. P. 54(b) because the Plaintiffs do not meet the standard under which that rule can be employed on an entry of partial final judgment. Plaintiffs and the Municipal Defendants contend that the Railroad Defendants lack standing to participate in this litigation separately from the Town and to challenge the Agreement. Plaintiffs also contend that because the terms of the Settlement Agreement are fair and reasonable and it was vetted and approved by Magistrate Judge Bowler, the Agreement should be approved. Plaintiffs respond that they have not invoked Rule 54(b) and are not requesting separate and final judgment.

The Railroad Defendants oppose the joint motion for the entry of Agreement of Judgment on the grounds that the Agreement, which incorporates the Settlement Agreement entered between the Municipal Defendants and the Plaintiffs, is unlawful and unenforceable. Specifically, they argue that by agreeing to allow Plaintiff Schwachman to participate on a citizen's committee relating to downtown redevelopment in Hopedale, it is an unlawful relinquishment of police power. The Defendants also contend that because the Agreement affects the rights of third parties, including themselves, and they have not had notice or an opportunity to be heard, it should not be allowed by the Court.

Plaintiffs first argue that the Railroad Defendants, who are not party to the Settlement Agreement, lack standing to object to its terms. *See Varsity Wireless Inv'rs, LLC v. Town of Hamilton*, 370 F. Supp. 3d 292, 299 (D.Mass. 2019), appeal dismissed sub nom. *Varsity Wireless Inv'rs, LLC v. Woods*, No. 19-1446, 2019 WL 5692232 (1st Cir. Aug. 28, 2019) (defendant not a party to an agreement for judgment did not have standing to challenge it. While it appears the

Railroad Defendants lack standing to a settlement agreement to which they are not a party,² *see* 2A Fed. Proc., L. Ed. § 3:546, *Federal Procedure, Lawyers Edition* (March 2021 Update), the Court nevertheless reviewed their arguments against the terms of the Agreement.

“Approval of a proposed consent decree is committed to the discretion of the district court.” *United States v. Cannons Engineering Corp.*, 720 F.Supp. 1027, 1035 (D.Mass. 1989), *aff’d* 899 F.2d 79 (1st Cir. 1990). In assessing a proposed consent decree, the district court “must review [it] to ensure that it is fair, adequate and reasonable; that the proposed decree will not violate the Constitution, a statute or other authority; and that it is consistent with the objectives of Congress.” *See Conservation Law Found. of New England, Inc. v. Franklin*, 989 F.2d 54, 58 (1st Cir. 1993) (internal quotations and citations omitted). In addition, in evaluating the fairness of a proposed consent decree, “a court should examine both the procedural and substantive aspects of the decree,” and “fairness should be examined from the standpoint of signatories and non-parties to the decree.” *Cannons*, 720 F.Supp. at 1040. The court’s “discretion should be exercised in light of the strong policy in favor of voluntary settlement of litigation.” *Id.* at 1035.

The Agreement resolving the claims between the Plaintiffs and the Municipal Defendants includes an agreement to withdraw the draft urban renewal plan that was the crux of the parties’ initial feuding and the inclusion of Mr. Schwachman in future municipal planning efforts involving *his* property. The Agreement also states that the parties will not allow the Railroad Defendants to “effectively run” any future urban renewal plan to the extent that it may affect the Shwachman properties. It does not, however, strictly prohibit any of the Railroad Defendants from participating in any process involving these issues. Furthermore, the Agreement does not

² The Railroad Defendants elected to not participate in the mediation.

prejudice the Railroad Defendants or take away any of their legal rights or claims in this or any matter.

The public interest is served in that the Town will benefit from renewal of the town redevelopment process and its potential to improve its buildings and land. The Agreement will also save the taxpayers of the Town the expenses associated with further litigation. Accordingly, the Agreement for Judgment between Plaintiffs and the Municipal Defendants constitutes a “fair, adequate and reasonable compromise” concerning the costs and benefits to the Town of Hopedale and its residents and the Plaintiffs.

Finally, Defendants argue that Rule 54(b) does not authorize the entry of judgment for the Plaintiff and Municipal Defendants at this time. Plaintiffs and the Municipal Defendants agree that Rule 54(b) does not apply here and contend that their only reference to the rule is on the docket entry, where the electronic filing system did not allow for a more definitive choice. As it is clear in the motion and supporting memorandum that the parties are asking for approval of the Settlement Agreement and not separate and final judgment, the Court will enter the Agreement for Judgment as filed.

Motion to Dismiss and Motion to Remand

Pursuant to Fed. R. Civ. P. 41(a)(2), the remaining Plaintiffs move that the Court dismiss with prejudice Counts XI and XII of Plaintiffs’ First Amended Complaint for the reasons set forth below. In the alternative, Plaintiffs, pursuant to Fed. R. Civ. P. 15, move that the Court allow Plaintiffs to amend their complaint to dismiss Counts XI and XII and drop the claims and parties that have been resolved through settlement.

“Rule 41(a) (2) establishes a framework for district courts to enter voluntary dismissals.” *Esso Standard Oil Co. (Puerto Rico) v. Rodriguez–Perez*, 455 F.3d 1, 3 (1st Cir.2006); *see also Doe v. Urohealth Systems, Inc.*, 216 F.3d 157, 160 (1st Cir. 2000). By its terms, Rule 41(a)(2)

applies to the dismissal of “an action.” The plain and ordinary language of Rule 41(a)(2) allows a plaintiff to dismiss an entire action against a defendant as opposed to one of several claims against a defendant. *See Klay v. United Healthgroup, Inc.*, 376 F.3d 1092, 1106 (11th Cir. 2004) (text of Rule 41 “does not permit plaintiffs to pick and choose, dismissing only particular claims within an action”). “A plaintiff wishing to eliminate particular claims or issues from the action should amend the complaint under Rule 15(a) rather than dismiss under Rule 41(a).” *Id.* (quoting 8 James Wm. Moore *Moore's Federal Practice* § 41.21[2] (3rd ed. 2013)). A dismissal of Counts XI and XII is therefore inappropriate under Rule 41(a) (2). Rule 15(a), Fed. R. Civ. P. however, remains available to drop Counts XI and XII. “Courts in this district construe motions to withdraw some but not all of the claims against a particular defendant as motions to amend pleadings under Fed. R. Civ. P. 15 rather than motions to dismiss voluntarily under Fed. R. Civ. P. 41(a).” *Momenta Pharm., Inc. v. Teva Pharm. USA, Inc.*, No. 10–cv–12079–NMG, 2014 WL 298027, at *2 (D.Mass. Jan. 24, 2014) (collecting cases); *see Addamax Corp. v. Open Software Found., Inc.*, 149 F.R.D. 3, 5 (D.Mass. 1993) (recognizing that “Rule 15(a), Fed. R. Civ. P., is the proper vehicle to drop some but not all claims against a defendant or defendants”); *Moore's Federal Practice: Civil* § 41.21. The Court thus construes Plaintiffs’ motion as a motion to amend its complaint to remove Counts XI and XII. *Id.*

The Railroad Defendants did not bring counterclaims in this action and no discovery has been taken. The entire action has been stayed pending the Court-ordered mediation, which concluded with the Agreement. Counts XI and XII do not apply to the Railroad Defendants’ anti-SLAPP special motions to dismiss the Massachusetts state law claims because they are based on federal civil rights. Finally the Railroad Defendants will not be prejudiced by the dismissal of

Counts XI and XII as Plaintiffs seek dismissal with prejudice and do not intend to proceed with the claims.

If a “district court has dismissed all claims over which it has original jurisdiction,” it “may decline to exercise supplemental jurisdiction” 28 U.S.C. § 1367. “It has consistently been recognized that [supplemental] jurisdiction is a doctrine of discretion, not of plaintiff’s right.” *United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 726 (1966). “Certainly, if the federal claims are dismissed before trial, even though not insubstantial in a jurisdictional sense, the state claims should be dismissed as well.” *Id.*

Having disposed of the federal questions in the case, the Court must determine whether to exercise supplemental jurisdiction over the remaining state-law claims. “The district courts may decline to exercise supplemental jurisdiction over a claim” if “the district court has dismissed all claims over which it has original jurisdiction.” *Id.* § 1367(c)(3); *Uphoff Figueroa v. Alejandro*, 597 F.3d 423, 431 n.10 (1st Cir. 2010). The decision “is a ‘pragmatic and case-specific’ one” that is committed to the district court’s discretion; the court “must take into account considerations of judicial economy, convenience, fairness to the litigants, and comity.” *Delgado v. Pawtucket Police Dep’t*, 668 F.3d 42, 48 (1st Cir. 2012) (quoting *Roche v. John Hancock Mut. Life Ins. Co.*, 81 F.3d 249, 257 (1st Cir. 1996)). “[I]n the usual case in which all federal-law claims are eliminated before trial, the balance of factors to be considered under the pendent jurisdiction doctrine—judicial economy, convenience, fairness, and comity—will point toward declining to exercise jurisdiction over the remaining state-law claims.” *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 350 n.7, 108 S.Ct. 614 (1988). Having concluded that Plaintiffs’ federal claims must be dismissed, I will decline to exercise supplemental jurisdiction over plaintiffs’ remaining state law claims. *See Roche v. John Hancock Mut. Life Ins. Co.*, 81 F.3d 249, 256–57

(1st Cir.1996) (“In a federal-question case, the termination of the foundational federal claim does not divest the district court of power to exercise supplemental jurisdiction but, rather, sets the stage for an exercise of the court's informed discretion. In deciding whether to retain jurisdiction on such an occasion, the trial court must consider concerns of comity, judicial economy, convenience, fairness, and the like.”) (internal citations omitted).

Conclusion

For the above stated reasons, the Joint Motion for Entry of Agreement for Judgment (Docket No. 106) is hereby **GRANTED**; Plaintiffs’ Motion to Dismiss Count XI and Count XII (Docket No. 112) is **GRANTED**; and Plaintiffs’ Motion to Remand (Docket No. 23) is **GRANTED**. The remaining motions shall be refiled in Worcester Superior Court.

SO ORDERED.

/s/ Timothy S. Hillman

TIMOTHY S. HILLMAN
UNITED STATES DISTRICT JUDGE

EXHIBIT 3



HOPEDALE *Massachusetts*

Home

Master Plan Steering Committee

The Town of Hopedale is collaborating with the Central Massachusetts Regional Planning Commission (CMRPC) to create a Master Plan. This plan, that we would like you to help author, lays out a vision for the community’s future over the next ten years and a roadmap to get there. A Master Plan aims to take a comprehensive look at the elements that shape a community including: Land Use, Population and Housing, Economic Development, Natural and Cultural Resources, Open Space and Recreation, Transportation and Circulation and Town Services and Facilities. If you have any questions regarding the Master Plan Steering Committee or the Master Plan, please reach out to [Jim Abbruzzese](#), Chair of the Master Plan Steering Committee at jabbruzzese@gmail.com

For more information regarding EnvisionHopedale, the Hopedale Master Plan and to view the EnvisionHopedale website - [Click Here](#)

Help us launch the Master Plan, Share your thoughts in the community survey - [Click Here!](#)

Board Members

Name	Title
Jim Abbruzzese	Chair - Unexpired Term
Carole Mullen	Member - Unexpired Term
Christopher P. Hodgens Chairman	Member - Unexpired Term
Julie Rinehart	Member - Unexpired Term
Phil Shwachman	Member - Unexpired Term

Name	Title
Fran Hodgens	Member - Unexpired Term
Karen Crebase	Member - Unexpired Term
Kaplan Hasanoglu	Member - Unexpired Term
Melissa Butler	Member - Unexpired Term



Master Plan Steering Committee Calendar

« August »

S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	<u>11</u>	12	13	14
15	16	17	18	19	20	21
22	23	24	<u>25</u>	<u>26</u>	27	28
29	30	31				

All upcoming events

Agendas

- **MASTER PLAN STEERING COMMITTEE**
August 26, 2021 - 6:30pm
- **MASTER PLAN STEERING COMMITTEE**
August 25, 2021 - 6:00pm
- **MASTER PLAN STEERING COMMITTEE**
August 11, 2021 - 6:00pm
- **MASTER PLAN STEERING COMMITTEE**
July 14, 2021 - 6:00pm
- **MASTER PLAN STEERING COMMITTEE**
June 24, 2021 - 6:00pm

[View all](#)

"If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please con-

tact the ADA Coordinator, Hopedale Town Hall, 78 Hopedale Street, Hopedale, MA 01747, or please call (508) 634-2203 x213 at least 7 days in advance of the scheduled meeting.”

78 Hopedale Street, Hopedale, MA 01747 PH: (508) 634-2203 FAX: (508) 634-2200

Town Office Hours: Monday - Thursday 8 AM - 4 PM & Friday 8 AM - 1 PM

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COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

PHILIP O. SHWACHMAN, MATTHEW W.)
SHWACHMAN, JUDITH L. SHWACHMAN,)
HOPEDALE PROPERTIES, LLC, and)
HOPEDALE INDUSTRIAL CENTER, LLC,)

Plaintiffs)

vs.)

TOWN OF HOPEDALE, TOWN OF HOPEDALE)
BOARD OF SELECTMEN, THOMAS A. WESLEY,)
LOUIS J. ARCUDI, III, BRIAN R. KEYES,)
STEVEN E. SETTE, GRAFTON & UPTON RAILROAD)
COMPANY, JON DELLI PRISCOLI, MICHAEL D.)
MILANOSKI, JASON G. MACDONALD, FIRST)
COLONY GROUP, LLC, DRAPER FALLS, LLC,)
LOBISSER BUILDING CORP., KEVIN LOBISSER,)
HOPEDALE HOUSING AUTHORITY,)
HOPEDALE DOWNTOWN REVITALIZATION)
COMMITTEE, HOPEDALE PLANNING BOARD,)
and DONALD W. HOWES,)

Defendants)

CASE NO. 1885-CV-01781D

DEFENDANTS, GRAFTON & UPTON RAILROAD COMPANY, JON DELLI PRISCOLI, MICHAEL MILANOSKI, AND FIRST COLONY GROUP, LLC'S SPECIAL MOTION TO DISMISS AND FOR ATTORNEYS' FEES PURSUANT TO M.G.L. C. 231, § 59H

Defendants Grafton & Upton Railroad Company, Jon Delli Priscoli, Michael Milanoski, and First Colony Group LLC (collectively, the “G&U Defendants”) move pursuant to G.L.c. 231 §59H to dismiss with prejudice Counts XI through XIV of Plaintiffs’ Second Amended Complaint (“2AC”). Plaintiffs brought the 2AC solely to chill the G&U Defendants’ efforts to petition various government boards and officials with respect to a proposed urban renewal project in Hopedale,

Massachusetts, and to retaliate against the G&U Defendants for engaging in these petitioning activities.

This is a classic SLAPP lawsuit. The G&U Defendants petitioned local and state officials to be involved in an urban renewal development which could have (but ultimately did not) result in an eminent domain taking of Plaintiffs' blighted mill property. The G&U Defendants had a reasonable factual and legal basis underlying their efforts to acquire the Plaintiffs' property through the URP. Significantly, despite the Plaintiffs' sworn allegations that their properties were "greatly improved and remediated" (2AC, ¶ 72) and that the URP's estimate of needed remediation and demolition was somehow "fraudulent" (2AC, ¶¶ 177, 258) the Plaintiffs later admitted that their entire mill complex needed to be demolished due to "severe deterioration and safety concerns." Plaintiff Phillip Shwachman was reported as saying, "as much as we would have liked to save it... we felt that the liability was greater than any potential benefits." These public statements eviscerate Plaintiffs' claims that the G&U Defendants (and other defendants) falsely characterized Plaintiffs' properties as blighted.

Further, it is indisputable that the G&U Defendants' activities caused no injury to the Plaintiffs because the URP was never finalized, and their properties were never taken by eminent domain or otherwise. It is clear that the sole reason the Plaintiffs brought claims against the G&U Defendants was to prevent them from exercising their right to petition the government by participating in the URP process. Accordingly, Plaintiffs' claims against the G&U Defendants must be dismissed under the Massachusetts anti-SLAPP statute, G.L.c. 231 §59H. A party that prevails with respect to a Special Motion to Dismiss under §59H is entitled to its expenses and attorneys' fees.

In further support of their Motion, the G&U Defendants rely on the Settlement Agreement and Mutual Release dated December 16, 2019 between Plaintiffs and the Town of Hopedale, filed herewith as Exhibit 1; Memorandum and Order on Plaintiffs' Motion for Remand, Plaintiffs' Motion to Dismiss Counts XI and XII and Joint Motion for Entry of Judgment (Hillman, J., May 19, 2021), attached hereto as Exhibit 2; the Affidavit of John DeWaele, filed herewith; the Affidavit of Jon Delli Priscoli, filed herewith; and their legal Memorandum, filed herewith.

WHEREFORE, defendants, Grafton & Upton Railroad Company, Jon Delli Priscoli, Michael Milanoski, and First Colony Group LLC, respectfully request that this Court: (1) allow their Motion to Dismiss, (2) enter Judgment dismissing plaintiffs' Second Amended Complaint in its entirety, with prejudice, (3) award them their costs and reasonable attorney's fees pursuant to G.L. c. 231, §59H, and (4) enter such other and further relief as this Court determines just and proper.

REQUEST FOR HEARING

Pursuant to Superior Court Rule 9A(c)(2), Grafton & Upton Railroad Company, Jon Delli Priscoli, Michael Milanoski, and First Colony Group LLC submit that a hearing may assist the Court in resolving the issues raised herein, and therefore request an opportunity to be heard.

GRAFTON & UPTON RAILROAD COMPANY,
JON DELLI PRISCOLI and FIRST COLONY
GROUP, LLC,

By their attorneys,

/s/ Donald C. Keavany

Donald C. Keavany, Jr., BBO# 631216

Andrew P. DiCenzo, BBO#689291

Christopher Hays, Wojcik & Mavricos, LLP

370 Main Street, 9th Floor

Worcester, MA 01608

Tel. 508-792-2800

Fax 508-792-6224

dkeavany@chwmlaw.com

adicenzo@chwmlaw.com

MICHAEL D. MILANOSKI,

By: /s/ William M. Pezzoni

William M. Pezzoni, BBO #397540

DAY PITNEY LLP

One International Place

Boston, MA 02110

Tel. (617) 345-4600

Fax (617) 345-4745

wpezzoni@daypitney.com

CERTIFICATION PURSUANT TO SUPERIOR COURT RULE 9C(b)

Pursuant to Superior Court Rule 9C(b), I hereby certify that counsel for the G&U Defendants and counsel for the Plaintiffs conferred in good faith by teleconference on June 17, 2021, and by email between June 17 – June 21, 2021, with respect to the subject matter of this motion. The parties were unable to narrow the areas of disagreement presented by this dispositive motion.

By /s/ Andrew P. DiCenzo

CERTIFICATE OF SERVICE

I, Andrew P. DiCenzo, Esq., hereby certify that on this 27th day of August, 2021, I caused a copy of the foregoing document to be emailed, pursuant to the Supreme Judicial Court Order concerning email service in cases under Mass. R. Civ. P. 5(b) dated March 30, 2020, to the following counsel of record:

David E. Lurie
Harley C. Racer
Lurie Friedman LLP
One McKinley Square
Boston, MA 02109

William M. Pezzoni
DAY PITNEY LLP
One International Place
Boston, MA 02110

/s/ Andrew P. DiCenzo

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

PHILIP O. SHWACHMAN, MATTHEW W.)
SHWACHMAN, JUDITH L. SHWACHMAN,)
HOPEDALE PROPERTIES, LLC, and)
HOPEDALE INDUSTRIAL CENTER, LLC,)

Plaintiffs)

vs.)

TOWN OF HOPEDALE, TOWN OF HOPEDALE)
BOARD OF SELECTMEN, THOMAS A. WESLEY,)
LOUIS J. ARCUDI, III, BRIAN R. KEYES,)
STEVEN E. SETTE, GRAFTON & UPTON RAILROAD)
COMPANY, JON DELLI PRISCOLI, MICHAEL D.)
MILANOSKI, JASON G. MACDONALD, FIRST)
COLONY GROUP, LLC, DRAPER FALLS, LLC,)
LOBISSER BUILDING CORP., KEVIN LOBISSER,)
HOPEDALE HOUSING AUTHORITY,)
HOPEDALE DOWNTOWN REVITALIZATION)
COMMITTEE, HOPEDALE PLANNING BOARD,)
and DONALD W. HOWES,)

Defendants)

CASE NO. 1885-CV-01781D

DEFENDANTS, GRAFTON & UPTON RAILROAD COMPANY, JON DELLI PRISCOLI, MICHAEL MILANOSKI, AND FIRST COLONY GROUP, LLC'S MOTION TO DISMISS PURSUANT TO MASS. R. CIV. P. 12(b)(6)

Defendants Grafton & Upton Railroad Company, Jon Delli Priscoli, Michael Milanoski, and First Colony Group LLC (collectively, the "G&U Defendants") move pursuant to Mass. R. Civ. P. 12(b)(6) to dismiss with prejudice Counts XI through XIV of Plaintiffs' Second Amended Complaint. The Second Amended Complaint does not identify a single compensable injury caused to the Plaintiffs by the G&U Defendants. Accordingly, Counts XI – XIV of the Amended

Complaint do not state a claim upon which relief can be granted against the G&U Defendants, and these claims must be dismissed with prejudice.

In support of their Motion, the G&U Defendants rely on the Settlement Agreement and Mutual Release dated December 16, 2019 between Plaintiffs and the Town of Hopedale, filed herewith as Exhibit 1; the Memorandum and Order on Plaintiffs' Motion for Remand, Plaintiffs' Motion to Dismiss Counts XI and XII and Joint Motion for Entry of Judgment (Hillman, J., May 19, 2021), filed herewith as Exhibit 2; the Town of Hopedale's web page identifying the Town's Master Plan Steering Committee, filed herewith as Exhibit 3; and their legal Memorandum, filed herewith.

WHEREFORE, defendants, Grafton & Upton Railroad Company, Jon Delli Priscoli, Michael Milanoski, and First Colony Group LLC, respectfully request that this Court: (1) allow their Motion to Dismiss, (2) enter Judgment dismissing plaintiffs' Second Amended Complaint in its entirety, with prejudice, and (3) enter such other and further relief as this Court determines just and proper.

REQUEST FOR HEARING

Pursuant to Superior Court Rule 9A(c)(2), Grafton & Upton Railroad Company, Jon Delli Priscoli, Michael Milanoski, and First Colony Group LLC submit that a hearing may assist the Court in resolving the issues raised herein, and therefore request an opportunity to be heard.

GRAFTON & UPTON RAILROAD COMPANY,
JON DELLI PRISCOLI and FIRST COLONY
GROUP, LLC,
By their attorneys,

/s/ Donald C. Keavany

Donald C. Keavany, Jr., BBO# 631216
Andrew P. DiCenzo, BBO#689291
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adicenzo@chwmlaw.com

MICHAEL D. MILANOSKI,

By: /s/ William M. Pezzoni

William M. Pezzoni, BBO #397540
DAY PITNEY LLP
One International Place
Boston, MA 02110
Tel. (617) 345-4600
Fax (617) 345-4745
wpezzoni@daypitney.com

CERTIFICATION PURSUANT TO SUPERIOR COURT RULE 9C(b)

Pursuant to Superior Court Rule 9C(b), I hereby certify that counsel for the G&U Defendants and counsel for the Plaintiffs conferred in good faith by teleconference on June 17, 2021, and by email between June 17 – June 21, 2021, with respect to the subject matter of this motion. The parties were unable to narrow the areas of disagreement presented by this dispositive motion.

By /s/ Andrew P. DiCenzo

CERTIFICATE OF SERVICE

I, Andrew P. DiCenzo, Esq., hereby certify that on this 27th day of August, 2021, I caused a copy of the foregoing document to be emailed, pursuant to the Supreme Judicial Court Order concerning email service in cases under Mass. R. Civ. P. 5(b) dated March 30, 2020, to the following counsel of record:

David E. Lurie
Harley C. Racer
Lurie Friedman LLP
One McKinley Square
Boston, MA 02109

William M. Pezzoni
DAY PITNEY LLP
One International Place
Boston, MA 02110

/s/ Andrew P. DiCenzo

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

PHILIP O. SHWACHMAN, MATTHEW W.)
SHWACHMAN, JUDITH L. SHWACHMAN,)
HOPEDALE PROPERTIES, LLC, and)
HOPEDALE INDUSTRIAL CENTER, LLC,)

Plaintiffs)

vs.)

TOWN OF HOPEDALE, TOWN OF HOPEDALE)
BOARD OF SELECTMEN, THOMAS A. WESLEY,)
LOUIS J. ARCUDI, III, BRIAN R. KEYES,)
STEVEN E. SETTE, GRAFTON & UPTON RAILROAD)
COMPANY, JON DELLI PRISCOLI, MICHAEL D.)
MILANOSKI, JASON G. MACDONALD, FIRST)
COLONY GROUP, LLC, DRAPER FALLS, LLC,)
LOBISSER BUILDING CORP., KEVIN LOBISSER,)
HOPEDALE HOUSING AUTHORITY,)
HOPEDALE DOWNTOWN REVITALIZATION)
COMMITTEE, HOPEDALE PLANNING BOARD,)
and DONALD W. HOWES,)

Defendants)

CASE NO. 18-cv-40209

AFFIDAVIT OF JON DELLI PRISCOLI

I, Jon Delli Priscoli on oath depose and say as follows:

1. I am the owner and Chief Executive Officer of Grafton & Upton Railroad Co. ("G&U") the Grafton & Upton Railroad Company and have personal knowledge of the facts set forth herein. I am also a Principal of First Colony Group, LLC.
2. I have significant experience developing commercial property. Developing a commercial real estate project, can be, and often is complicated and requires constantly working with town and state (and many times federal) officials from the planning stages through the certificate of occupancy stage.
3. Michael Milanoski is the President of G&U and First Colony Group, LLC. Mr. Milanoski assumed his role as President of G&U in 2017. Mr. Milanoski is also the Town Administrator of the Town of Carver, MA and prior to that served in the position of Executive Director of the Attleboro Redevelopment Authority in the

town of Attleboro. Mr. Milanoski has a great deal of experience in navigating local, state and federal real estate development laws and regulations.

4. First Colony came into existence in December 2017, upon the filing of its Certificate of Organization with the Massachusetts Secretary of State. A true and accurate copy of First Colony's Certificate of Organization is attached hereto as Exhibit 1.
5. G&U currently operates a rail line running from the main CSX main line between Albany and Boston in a southerly direction approximately 16.5 miles through the Towns of Grafton, Upton, Hopedale and Milford to another CSX line. The railroad is known as a "bridge" line because it connects two main lines. The G&U rail line bisects some of the property that is at issue in this case.
6. As the plaintiffs correctly assert at paragraph 68 of the Complaint, G&U engaged in a 1-year track restoration project through the Hopedale section of the rail line, which was completed in or around July 2013. Not that it matters for the purpose of the Special Motion to Dismiss that is being filed now but the 1-year track restoration project was not primarily funded by the Commonwealth, as the plaintiffs' falsely assert.
7. The Plaintiffs also falsely state that I, on my own behalf, engaged in negotiations with Mr. Shwachman regarding the purchase of some property in and around the Hopedale Rail Yard that G&U re-opened in or around July 2013. I refer you to paragraphs 72-74 of the Plaintiffs' Complaint. This is patently false. Whenever I had discussions with Mr. Shwachman about acquiring property around the Hopedale Rail Yard, I was acting on behalf of G&U. Mr. Shwachman knows this. In paragraph 74, Mr. Shwachman alleges that he and I "completed a land swap of some land parcels on or near the Property." This is false. A true and accurate copy of the deed reflecting this land swap is attached hereto as Exhibit 2. Grafton & Upton Railroad Company acquired the property in the land swap. Jon Delli Priscoli did not acquire this property.
8. In or around June 2017, I was contacted by the Hopedale Town Administrator, Steven Sette, to discuss whether G&U had an interest in working with the Town of Hopedale to develop the Draper Complex, and surrounding properties. I was told that the town had grown frustrated with the owner of the Draper Complex property over the lack of movement towards developing this property.
9. Prior to that June 2017 communication from Mr. Sette I had had no communications with any Hopedale official about the development of the Draper Complex property. The allegation in paragraph 75 of the Complaint that I and G&U had met with town officials in early 2017 to conspire regarding the Draper Complex property is false.

10. Likewise the allegation in paragraph 76 of the Complaint that by May 2017 that G&U hired Mr. Milanoski as President and as President of “its development wing, First Colony” is false. As set forth in Exhibit 1, First Colony was not created until December 2017.
11. As a result of this initial communication from Mr. Sette, G&U was invited to a meeting on or around June 28 at Hopedale Town Hall. Mr. Milanoski attended this meeting with me on behalf of G&U. Others at the meeting included State Senator Ryan Fattman and Hopedale town officials including Selectman Thomas Wesley and Mr. Sette. The first meeting that I attended with Hopedale officials regarding the Draper Complex property occurred on June 28, which was within a week or 2 of my initial conversation with Mr. Sette.
12. After the June 28, 2017 meeting, I know that Mr. Milanoski attended many meetings on behalf of G&U and that he engaged with town officials and state officials in furtherance of assisting the town to develop an acceptable Urban Renewal Plan in accordance with the Urban Renewal Statute – Chapter 121B of the Massachusetts General Laws. Mr. Milanoski’s actions were taken on behalf of G&U.
13. I have read in the Plaintiffs’ Complaint that G&U and I entered into a quid pro quo deal with the Town of Hopedale regarding the development of the Draper Falls property. This is false. I offered to volunteer my company’s expertise in land development planning to minimize the expense to the Town, which is what I have done on most other real estate development projects that my companies have been involved in. To this end, Mr. Milanoski volunteered many hours to meet with town officials about their vision for improving downtown Hopedale, including the Draper Complex property. All of these actions were taken on behalf of G&U, and after First Colony was formed, on behalf of both entities.
14. In any event, neither G&U, First Colony Group, nor I signed an agreement with the Town of Hopedale regarding the development of the Draper Complex property.
15. Ultimately a draft Urban Renewal Plan was prepared regarding the Draper Falls property, a copy of which is attached as Exhibit 12 to the Plaintiff’s Complaint. I do know that Mr. Milanoski was involved in a prior URP when he worked in Attleboro and that he offered his services to Hopedale with respect to its draft URP. Mr. Milanoski was never acting on his own behalf, or on behalf of the Town of Hopedale with respect to his work on the URP, or when he met and/or communicated with Hopedale town officials. He was always acting on behalf of G&U and First Colony (after First Colony was organized). He certainly was helping the town of Hopedale, but by doing so, he was advancing the interests of G&U and First Colony.

16. To my knowledge, the URP has not been approved by DCHD.

Signed under the penalties of perjury this 28th day of January 2019

/s/ Jon Delli Priscoli

Jon Delli Priscoli

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on January 28, 2019.

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Day Pitney LLP
One International Place
Boston, MA 02110

*/s/ Donald A. Keavany, Jr.*_____

EXHIBIT 1



The Commonwealth of Massachusetts
William Francis Galvin

Minimum Fee: \$500.00

Secretary of the Commonwealth, Corporations Division
 One Ashburton Place, 17th floor
 Boston, MA 02108-1512
 Telephone: (617) 727-9640

Certificate of Organization

(General Laws, Chapter)

Identification Number: 001304385

1. The exact name of the limited liability company is: FIRST COLONY GROUP, LLC

2a. Location of its principal office:

No. and Street: 7 EDA AVENUE
 City or Town: CARVER State: MA Zip: 02330 Country: USA

2b. Street address of the office in the Commonwealth at which the records will be maintained:

No. and Street: 7 EDA AVENUE
 City or Town: CARVER State: MA Zip: 02330 Country: USA

3. The general character of business, and if the limited liability company is organized to render professional service, the service to be rendered:

THE GENERAL CHARACTER OF THE BUSINESS IS (A) TO OPERATE AND MANAGE BUSINESSES INCLUDING ENTERTAINMENT VENUES AND ENTITIES THAT OWN AND DEVELOPMENT REAL ESTATE AND (B) TO ENGAGE IN ANY LAWFUL ACTIVITIES, DIRECTLY OR INDIRECTLY RELATED OR INCIDENTAL TO THE FOREGOING AND (C) TO ENGAGE IN ANY OTHER ACTIVITY IN WHICH A LIMITED LIABILITY ORGANIZED UNDER THE LAWS OF THE COMMONWEALTH OF MASSACHUSETTS MAY LAWFULLY ENGAGE.

4. The latest date of dissolution, if specified:

5. Name and address of the Resident Agent:

Name: MICHAEL MILANOSKI
 No. and Street: 7 EDA AVENUE
 City or Town: CARVER State: MA Zip: 02330 Country: USA

I, MICHAEL MILANOSKI resident agent of the above limited liability company, consent to my appointment as the resident agent of the above limited liability company pursuant to G. L. Chapter 156C Section 12.

6. The name and business address of each manager, if any:

Title	Individual Name First, Middle, Last, Suffix	Address (no PO Box) Address, City or Town, State, Zip Code
MANAGER	MICHAEL MILANOSKI	7 EDA AVENUE CARVER, MA 02330 USA

7. The name and business address of the person(s) in addition to the manager(s), authorized to execute documents to be filed with the Corporations Division, and at least one person shall be named if there are no managers.

Title	Individual Name First, Middle, Last, Suffix	Address (no PO Box) Address, City or Town, State, Zip Code
SOC SIGNATORY	JON DELLI PRISCOLI	7 EDA AVENUE CARVER, MA 02330 USA

8. The name and business address of the person(s) authorized to execute, acknowledge, deliver and record any recordable instrument purporting to affect an interest in real property:

Title	Individual Name First, Middle, Last, Suffix	Address (no PO Box) Address, City or Town, State, Zip Code
REAL PROPERTY	MICHAEL MILANOSKI	7 EDA AVENUE CARVER, MA 02330 USA
REAL PROPERTY	JON DELLI PRISCOLI	7 EDA AVENUE CARVER, MA 02330 USA

9. Additional matters:

**SIGNED UNDER THE PENALTIES OF PERJURY, this 22 Day of December, 2017,
JON DELLI PRISCOLI**

(The certificate must be signed by the person forming the LLC.)

EXHIBIT 2



2014 00031033

Bk: 52221 Pg: 71

Page: 1 of 3 04/15/2014 03:45 PM WD

PROPERTY LOCATION: 11 FITZGERALD DRIVE, HOPEDALE, MASSACHUSETTS

QUITCLAIM DEED

HOPEDALE PROPERTIES, LLC, a Delaware limited liability company with an address c/o First American Realty, Inc., P.O. Box 646, Worcester, Massachusetts 01613,

For consideration paid, and in full consideration of less than One Hundred Dollars (\$100.00) and other good and valuable consideration,

grants to **GRAFTON & UPTON RAILROAD COMPANY**, a Massachusetts corporation with a place of business at 929 Boston Post Road East, Marlborough, Massachusetts 01752,

With Quitclaim Covenants, that certain parcel of land known as 11 Fitzgerald Drive, Hopedale, Worcester County, Massachusetts and more particularly described on Exhibit A attached hereto.

Subject to and with the benefit of all easements, restrictions, rights of way and all other matters of record insofar as in force and applicable, including without limitation reservation of flowage rights, if any.

Hopedale Properties, LLC is not classified or treated as a corporation for federal income tax purposes for the current tax year.

This conveyance does not require the payment of excise tax stamps pursuant to M.G.L. c. 64D.

Being the premises conveyed to Hopedale Industrial Center, LLC by Quitclaim Deed of Hopedale Development, Inc. dated July 30, 1999 and recorded with the Worcester District Registry of Deeds (the "Registry") in Book 21718, Page 238, and being a portion of the premises conveyed to Hopedale Properties, LLC by Quitclaim Deed of Hopedale Industrial Center, LLC dated December 23, 2005 and recorded with the Registry in Book 38096, Page 151.

Paul
3

Executed as a sealed instrument this 14th day of April, 2014.

HOPEDALE PROPERTIES, LLC
By its Manager,
FIRST AMERICAN REALTY, INC.



By: _____
Philip O. Shwachman, President and Treasurer

THE COMMONWEALTH OF MASSACHUSETTS

Worcester, ss.

On 14th day of April, 2014, before me, the undersigned notary public, personally appeared Philip O. Shwachman, President and Treasurer of First American Realty, Inc., the Manager of Hopedale Properties, LLC, proved to me through satisfactory evidence of identification, which was photographic identification with signature issued by a federal or state governmental agency, oath or affirmation of a credible witness, personal knowledge of the undersigned, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily and as his free act and deed for its stated purpose as the President and Treasurer of First American Realty, Inc., the Manager of Hopedale Properties, LLC.



Notary Public
Date Commission Expires:

VALERIE J. SAMPSON
Notary Public
Commonwealth of Massachusetts
My Commission Expires January 9, 2015

EXHIBIT A

A certain parcel of land located westerly of the Grafton & Upton Railroad and southerly of Depot Street in Hopedale, Massachusetts and is more particularly shown on a plan entitled "Plan of Land in Hopedale, Mass. Property of: Rockwell International, Scale: 80 feet to an inch, Dated December 20, 1978, Guerriere and Halnon, Inc. Engineering and Land Surveying, 326 West Street, Milford, Mass." and revised March 13, 1979. Said plan is recorded at the Southern Worcester Registry of Deeds in Plan Book 471, Plan 62 and described on said plan as follows:

Beginning at a point on the westerly sideline of the Grafton & Upton Railroad. Said point being S 50 degrees 14' 39" W a distance of 3.83 feet from a stone bound with an iron pin, thence

S 50 degrees 14' 39" W a distance of 118.34 feet by said railroad land to a point near a chain link fence at land now or formerly of Rockwell International, thence

N 53 degrees 15' 17" W a distance of 217.74 feet to a point, thence

S 86 degrees 45' 26" W a distance of 20.14 feet to a point, thence

N 46 degrees 49' 23" W a distance of 55.76 feet to a point, thence

N 55 degrees 09' 30" W a distance of 126.84 feet to a point, at a curve

The last four courses bounding on land now or formerly, of Rockwell International and generally following a chain link fence to land of Grafton & Upton Railroad, thence

Curving to the left by the arc of a curve whose radius is 839.08 feet a length of 67.60 feet to a point of tangency.

Said point being N 71 degrees 33' 29" W a distance of 2.10 feet from a stone bound with iron pin, thence

S 71 degrees 33' 29" E a distance of 249.93 feet to a point of curvature, thence

Curving to the right by the arc of a curve whose radius is 614.56 feet a length of 143.78 feet to the point of beginning. The last three courses bounding on land of Grafton & Upton Railroad.

Said parcel contains an area of 25,744 square feet, more or less, and is known as 11 Fitzgerald Drive, Parcel 173-2, Sheet 11, on Hopedale Assessors Atlas 9/87, revised 9/30/02.

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss.

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO. 1885CV01781

PHILIP O. SHWACHMAN, MATTHEW W.)
SHWACHMAN, JUDITH L. SHWACHMAN,)
HOPEDALE PROPERTIES, LLC, and)
HOPEDALE INDUSTRIAL CENTER, LLC,)

Plaintiffs)

vs.)

TOWN OF HOPEDALE, TOWN OF HOPEDALE)
BOARD OF SELECTMEN, THOMAS A. WESLEY,)
LOUIS J. ARCUDI, III, BRIAN R. KEYES,)
STEVEN E. SETTE, GRAFTON & UPTON RAILROAD)
COMPANY, JON DELLI PRISCOLI, MICHAEL D.)
MILANOSKI, JASON G. MACDONALD, FIRST)
COLONY GROUP, LLC, DRAPER FALLS, LLC,)
LOBISSER BUILDING CORP., KEVIN LOBISSER,)
HOPEDALE HOUSING AUTHORITY,)
HOPEDALE DOWNTOWN REVITALIZATION)
COMMITTEE, HOPEDALE PLANNING BOARD,)
and DONALD W. HOWES,)

Defendants)

DEFENDANTS, GRAFTON & UPTON RAILROAD COMPANY, JON DELLI PRISCOLI, MICHAEL MILANOSKI AND FIRST COLONY GROUP, LLC'S MEMORANDUM IN SUPPORT OF THEIR SPECIAL MOTION TO DISMISS AND FOR ATTORNEYS' FEES PURSUANT TO M.G.L. C. 231, § 59H

I. Summary of Argument

The Massachusetts Anti-SLAPP Statute, G.L.c. 231 §59H provides for early dismissal of lawsuits that are based solely on a party's exercise of its right to petition, and an award of attorney's fees to the parties defending such lawsuits. Section 59H defines a party's exercise of its right to petition in relevant part as "any written or oral statement made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other

governmental proceeding; [or] any statement reasonably likely to encourage consideration or review of an issue by a legislative, executive, or judicial body or any other governmental proceeding...”

As set forth in their vast 394-paragraph Second Amended Complaint (“2AC”), the claims asserted by the Plaintiffs against defendants, Grafton & Upton Railroad Company (“G&U”), Jon Delli Priscoli, Michael Milanoski, and First Colony Group, LLC (“First Colony”) (collectively, the “G&U Defendants”) are based solely on the petitioning activities of the G&U Defendants regarding the potential opportunity to acquire and develop real estate in Hopedale, Massachusetts in 2017 and 2018. These petitioning activities included oral and written statements made by the G&U Defendants to various officials of the Town of Hopedale (the “Town”) and various Town boards made by the G&U Defendants during their participation in the early stages of an Urban Renewal Planning (“URP”) process as part of the Town’s effort to revitalize its downtown. The URP contemplated the acquisition by eminent domain or donation of the Plaintiffs’ long-vacant and dilapidated mill property. The Plaintiffs opposed the URP plan and initiated a scorched earth litigation strategy against not only the Town but also the G&U Defendants and other private parties. Plaintiffs brought multiple tort and statutory claims against the G&U Defendants, alleging that the proposed URP “fraudulently” undervalued their property and inflated its estimate of needed remediation and demolition activities so that the property could be acquired for less than market value. Plaintiffs also claimed that the G&U Defendants’ efforts to acquire their properties amounted to intimidation, threats or coercion in violation of the Massachusetts Civil Rights Act.

The G&U Defendants had a reasonable factual and legal basis underlying their efforts to acquire the Plaintiffs’ property through the URP. Significantly, despite the Plaintiffs’ allegations

(originally made in 2018 and reasserted in August 2021) that their properties were “greatly improved and remediated” (2AC, ¶ 72) and that the URP’s estimate of needed remediation and demolition was somehow “fraudulent” (2AC, ¶¶ 177, 258) the Plaintiffs determined in 2020 that their entire mill complex needed to be demolished due to “severe deterioration and safety concerns.” See Exhibit D to Affidavit of John DeWaele. Plaintiff Phillip Shwachman was reported as saying, “as much as we would have liked to save it... we felt that the liability was greater than any potential benefits.” Id. Indeed in July 2021 – mere weeks before Plaintiffs asserted to this Court that the properties had been substantially improved and remediated – the Plaintiffs’ mill building partially collapsed causing debris to fall onto the public streets below. See Exhibit E to DeWaele Affidavit. Currently, the mill buildings have been almost totally demolished, leaving vacant lots covered in debris, building materials and trash. See Exhibit F to DeWaele Affidavit. Plaintiffs cannot now plausibly argue that the defendants’ efforts to designate their property as blighted was without reasonable factual support.

Further, it is indisputable that the G&U Defendants’ activities caused no injury to the Plaintiffs because the URP was never finalized, and their properties were never taken by eminent domain or otherwise. It is clear that the sole reason the Plaintiffs brought claims against the G&U Defendants was to prevent them from exercising their right to petition the government by participating in the URP process. This demonstrable fact is established by the Settlement Agreement entered into between the Town and Plaintiffs wherein the Plaintiffs extracted a concession from the Town that any future “master planning or urban renewal process shall not be effectively run by G&U and its affiliates...” See Exhibit 1 (Settlement Agreement and Mutual Release dated December 16, 2019, p. 18 of 34). Accordingly, Plaintiffs’ claims against the G&U Defendants must be dismissed under the anti-SLAPP statute, G.L.c. 231 §59H. A party that

prevails with respect to a Special Motion to Dismiss under §59H is entitled to its expenses and attorneys' fees.

II. Procedural Background and Summary of Claims Against the GU Defendants.

Plaintiffs' 2AC contains 394 paragraphs over 100 pages and asserts, as against the G&U Defendants,¹ counts alleging violations of the Massachusetts Civil Rights Act, violations of G.L. c. 93A, tortious interference with an advantageous business relationship, and civil conspiracy. The gravamen of the 2AC is that the G&U Defendants (with the other defendants) conspired to "steal" properties owned by entities controlled by Shwachman through eminent domain without compensation under the guise of an urban renewal plan. 2AC, ¶77. Significantly, however, the 2AC does not allege that the property has actually been taken, or that any actions have been taken under G.L. c 79 – the Eminent Domain Statute – to effectuate the taking of property owned by Shwachman controlled entities.

The properties at issue include approximately 77 acres and over 1,000,000 square feet of buildings in downtown Hopedale, comprising what was once the Draper Corporation mill complex (hereinafter, the "Draper Property"). 2AC ¶ 2. At one time, Draper was the largest manufacturer of power loom equipment for the textile industry before it shuttered the factory around 1980. 2AC ¶ 36. Shwachman began acquiring the Draper Property in 1990. Although Plaintiffs allege Shwachman invested significant time and money in remediating the complex, and that by 2005, Shwachman had "substantially improved the condition of the [Draper] Property" (see 2AC ¶¶ 37-50), it is undisputed that the Draper Property remains undeveloped as of today. 2AC ¶¶ 51-69. Further, Plaintiff Philip Shwachman's development partner, the Worcester Business Development Corporation stated that Mr. Shwachman "initiated the

¹ The Plaintiffs have settled all claims against all other defendants. Six counts were brought against the G&U Defendants, but two counts alleging violations of 42 USC §1983 were voluntarily dismissed with prejudice by Plaintiffs after the defendants removed this case to federal court.

abatement and demolition activities of approximately 250,000 sf of the southern portion of the 1,000,000 sf complex in August 2020,” belying any claim by Plaintiffs that they had completed abating the properties by 2018, let alone 2005. See DeWaele Affidavit, ¶ 5 (emphasis added). Although Plaintiffs initially intended to demolish only approximately a quarter of the mill complex, they later determined that they could not salvage any of it and decided that they had to demolish the entire complex. See id., ¶ 7. The demolition is ongoing, and recently an unplanned partial collapse of one of the buildings caused debris to fall into a public street. Id., ¶¶ 10-11. Clearly, the reality of the condition of Plaintiffs’ properties throughout the period 2017 – present is far different and much worse than the “substantially remediated and improved” condition portrayed in the 2AC.

Plaintiffs allege that by May 2017, G&U, its owner Jon Delli Priscoli and its President, Michael Milanoski, were conspiring with the Hopedale Board of Selectmen (“BOS”) and other officials to allow G&U to “steal” the Draper Property “under the guise of an Urban Renewal Plan.” See 2AC ¶ 77. The 2AC describes an alleged but unfounded “quid pro quo” exchange of G&U’s consulting and planning services in exchange for a transfer of the Draper Property to G&U for no cost. 2AC ¶¶ 4, 122, 135. The 2AC further claims that the planning process was carried out largely in secret. 2AC ¶¶ 93-153. The 2AC describes a complicated series of Town appointments and meetings, allegedly held without public input and sometimes outside of public recordkeeping, through which the defendants developed their plan. Id. Shwachman alleges he attempted to participate in the planning process but was excluded. 2AC ¶¶ 179-180.

During the period February 2018 to April 2018, an Urban Renewal/Downtown Revitalization Committee (“DRC”) was formed to work on the urban renewal project referenced in Article 13 of the November 2017 Town Warrant. 2AC ¶¶ 129-146. In a February 2018 public

hearing, the BOS discussed the Town's interest in pursuing an Urban Renewal Plan that would include the railroad that bisected the Draper Property. 2AC ¶¶ 133-135. The BOS placed an advertisement in the Milford Daily News and publicly invited individuals to serve on the DRC. 2AC ¶136. Shwachman learned of the Milford Daily News advertisement and contacted Hopedale's Town Administrator, Steve Sette to advise Sette of his interest to serve on the DRC. Id. Shwachman's email was apparently ignored by Sette. 2AC ¶¶ 136-138.

G&U and First Colony, primarily through the time and services provided by their President, Milanoski, provided input to the DRC regarding the preparation of a draft Urban Renewal Plan. 2AC ¶¶ 183-220. Ultimately a draft of an Urban Renewal Plan was discussed at DRC's June 5, 2018 public meeting. 2AC, ¶¶ 153-155. The last draft of the URP consisted of a 37-page document which outlined the problems with the Draper Property, the potential for valuable redevelopment and a plan for implementation. 2AC, Exhibit 17. The draft URP proposed installing 565 units of new housing, 175,000 sq. ft. of business development in mixed use zoning and recreational amenities over the course of 10 years. Id. at pp. 18, 25. Pursuant to the draft URP, G&U was initially selected as the developer. Id., at p. 23. Thereafter a new entity, Draper Falls, LLC was identified as a potential developer for the project. Id. Priscoli was a Manager of Draper Falls until his resignation in June 2018. Id., at pp. 23-24. The draft URP was premised, in part, on Hopedale acquiring the Draper Property through eminent domain and transferring it to Draper Falls, LLC through a Land Disposition Agreement.² Id. at pp. 24-25, 28-29.

The DRC voted to approve a draft of the URP at a public hearing on June 13, 2018. 2AC, ¶159. On June 19, 2018 the Hopedale Housing Authority (HHA) "conditionally approved" the

² A Land Disposition Agreement (LDA) "is an instrument describing the terms of such sale or lease. The LDA for each parcel shall insure that the redeveloper conforms to and carries out the requirements of the Urban Renewal Plan and that the interests of the project are safeguarded." 760 CMR 12.05(2)(c).

URP at a public hearing. 2AC, ¶162. HHA's approval of the URP was contingent upon receiving the final plan and figures and opinion of counsel, which are requirements of Massachusetts law. Id.; G.L. c. 121B. Plaintiffs allege that the HHA has never been presented with an opinion of counsel. 2AC ¶ 166. As a result of, inter alia, the failure to obtain an opinion of counsel, the HHA vote was never deemed a final and binding vote. There is no allegation in the 2AC that any part of the URP was ever actually approved by HHA or the DHCD or in fact was implemented. In fact, it is undisputed that the draft URP was withdrawn in 2019 and is no longer being considered. See Exhibit 1 (Settlement Agreement and Mutual Release dated December 16, 2019, p. 18 of 34); see also Affidavit of Jon Delli Priscoli, ¶ 16.³

Based upon the above facts, the Plaintiffs brought six causes of action against the G&U Defendants, including two federal civil rights claims (both of which have been voluntarily dismissed with prejudice), along with violations of the Massachusetts Civil Rights Act (Count XI of the 2AC), violations of G.L. c. 93A (Count XII), tortious interference with advantageous business relationships (Count XIII), and civil conspiracy (Count XIV). Plaintiffs allege in boilerplate terms that the G&U Defendants interfered with their constitutional rights to due process and equal protection and with "animus, intimidation and economic coercion, singled out Plaintiffs for adverse treatment relating to their protectable and legitimate interests in their property and the URP." AC, ¶ 385.

The defendants removed the case to the United States District Court for the District of Massachusetts due to the inclusion of the federal claims, and then filed an Anti-SLAPP motion in federal court. Following a court-ordered mediation, the Plaintiffs resolved all of their claims against the Town and the other non-G&U Defendants. The Plaintiffs and the Town entered into

³ The Affidavit of Jon Delli Priscoli was previously submitted to the United States District Court as Document No. 33, and is reproduced in support of this Motion.

an Agreement for Judgment which stated that the URP would be withdrawn, and that “the Town agrees that any such master planning or urban renewal process shall not be effectively run by G&U Railroad or its affiliates, employees or owner.” See Exhibit 1 (Settlement Agreement and Mutual Release dated December 16, 2019, p. 18 of 34); Exhibit 2 (Memorandum and Order on Plaintiffs’ Motion for Remand, Plaintiffs’ Motion to Dismiss Counts XI and XII and Joint Motion for Entry of Judgment (Hillman, J., May 19, 2021)). Plaintiffs voluntarily dismissed their federal claims and sought remand to this Court, which was ordered on May 19, 2021. The federal court did not decide the Anti-SLAPP motion before remanding the case. Following remand, Plaintiffs served their 2AC on August 9, 2021.

III. GU Defendants’ Brief Response to Plaintiffs’ Claims

The Plaintiffs brought their suit because they wanted to stave off the approval of the URP and prevent the possible taking of their property by Hopedale. Although they were obviously upset not to be included in the early stages of the URP process, the Plaintiffs do not and cannot identify any protectable right they had to participate in the URP process at the level of their choice. See Trager v. Peabody Redev. Auth., 367, F.Supp. 1000, 1002 (D. Mass. 1973) (“In eminent domain cases, the broad decision to condemn an area for a public purpose, e.g., urban renewal in a blighted area, is legislative and does not require an adjudicative hearing with notice and an opportunity to be heard provided to each individual affected.”).

G&U attended a meeting in June 2017 at Hopedale Town Hall that would include, among others, Town officials and State Senator Ryan Fattman. Affidavit of Jon Delli Priscoli, (Priscoli Aff), ¶¶ 8-11. Prior to this meeting in early to mid-June 2017, Priscoli and G&U had not spoken with Hopedale officials about redeveloping the Draper Property. Id. Priscoli and Milanoski attended the meeting on June 28, 2017 at Hopedale Town Hall on behalf of G&U. Id. Priscoli,

Milanoski and G&U were interested in developing the Draper Property should the Town obtain the Draper Property through eminent domain proceedings. Id. Subsequent to the June 2017 meeting, G&U, primarily through Milanoski, engaged in substantive petitioning activity including offering its input to the Town regarding the urban renewal process – which is overseen and regulated by the Department of Housing and Community Development (DHCD). At no time, did G&U, Priscoli, and/or Milanoski (or any entity controlled by Priscoli) enter into a quid pro quo agreement with the Town with respect to the redevelopment of the Property. Id., ¶ 12. In fact, the involvement with Town officials engaged in by G&U is common in real estate development and appears to be quite similar to the activity engaged in by Shwachman when he closely cooperated and participated in the drafting of the 2007 DCRC and the 2008 MOU, (2AC ¶¶ 53 – 60). Similarly, G&U, primarily through Milanoski, met with Hopedale Town officials during the second half of 2017, attended DRC meetings in 2018 and offered input to the DRC to prepare a draft Urban Renewal Plan (URP) for ultimate submission to DHCD.

Despite the Plaintiffs’ characterization of the URP process as “secret” and a “conspiracy,” most of the detail of the factual narrative in their 2AC discuss public meetings, hearings, and documents. See, e.g., 2AC ¶¶ 81-85 (discussion of May 2017 warrant and meeting); ¶¶ 116-121 (discussing December 2017 Special Town Meeting); ¶ 136 (the Selectmen published an advertisement in the Milford Daily News seeking applicants to the URP subcommittee); ¶¶ 140-142 (discussing Selectmen meetings and subcommittee meetings in March and April 2018); ¶¶ 154-158 (discussing the public release and discussion of draft URP plan); ¶¶ 195-201 (discussing presentation of URP to Planning Board); ¶ 232 (“On October 2, 2018, Shwachman, upon learning of the scheduling of the October 3 meeting...”); ¶¶ 248-249 (discussing meeting between Selectmen and the Water & Sewer Departments). The Plaintiffs’

claims of secrecy are belied by their own sworn allegations. Indeed, Plaintiff Philip Shwachman admitted in an out-of-court statement that “I sat in on ... some of the eminent domain hearings and listened intently to the debate...and clearly heard the frustration of the many cycles that have been missed of the economy over the last 30, 40 years and having to live with the vacant mill being there...I fully understand the frustration ... It’s critical for the long-term success of the community that activity happen there.” See Exhibit D to the DeWaele Affidavit.

To the extent the Plaintiffs have detailed any procedural, public record, or public meeting shortcomings with respect to the development of the URP –these shortcomings could have formed the basis to an administrative appeal or other challenge to a finalized URP, or a challenge to a finalized eminent domain taking of the Plaintiffs’ property. However, any such claims were premature when filed because the URP was merely a draft. It was never approved by the Town, or by DHCD, and the Plaintiffs’ property was never taken, by eminent domain or otherwise. The Plaintiffs later reached an Agreement for Judgment with the Town which forecloses any future possibility of the draft URP being finalized. See Exhibit 1 (Settlement Agreement and Mutual Release dated December 16, 2019, p. 18 of 34). The sole purpose of the lawsuit is to seek retribution for the G&U Defendants’ engagement in petitioning activity by its participation in the URP process initiated by the Town and their attempt to acquire the rights to develop the Plaintiffs’ land in the event the Town took the land through the URP and eminent domain processes.

In summary, the G&U Defendants participated in a URP process which could have resulted in the eminent domain taking or donation of the Plaintiffs’ property. All of the facts alleged in the 2AC relate to the URP process and the G&U Defendants’ participation in the URP process, which has been undeniably withdrawn and deemed null and void as a result of the

Settlement Agreement / Agreement for Judgment entered in this action. See Exhibit 1 (Settlement Agreement and Mutual Release dated December 16, 2019, p. 18 of 34). The Plaintiffs sued the G&U Defendants with an explicit aim of removing the G&U Defendants from participation in the URP process and future URP efforts in downtown Hopedale. The Plaintiffs have achieved undeniable success in this effort, having reached an Agreement for Judgment with the Town of Hopedale which states that “the Town agrees that any such master planning or urban renewal process shall not be effectively run by G&U Railroad or its affiliates, employees or owner.” Id. Yet, Plaintiffs maintain this action, seeking only to continue their vengeful efforts seeking retribution against the G&U Defendants for their petitioning activities related to the URP process. This is a classic effort to chill a party’s right to petition which must be dismissed on anti-SLAPP grounds.

IV. Argument

A. Legal Standard

A party may file a special motion to dismiss under the Massachusetts anti-SLAPP statute, G.L. c. 231 §59H, if the claims asserted against that party are based on that party’s exercise of its right to petition government. Claims that are based on a party’s exercise of its right of petition are subject to dismissal under the anti-SLAPP statute via a special motion to dismiss. Duracraft Corp. v. Holmes Prods. Corp., 427 Mass. 156, 167-168 (1998); G. L. c. 231, § 59H. The moving party under §59H must “make a threshold showing through pleadings and affidavits that the claims asserted against it are based on its petitioning activities alone and have no substantial basis other than or in addition to the petitioning activities.” Duracraft, at 167-168. “[T]he motive behind the petitioning activity is irrelevant at this initial stage.” Office One, Inc. v. Lopez, 437 Mass. 113, 122 (2002).

If the special movant makes the initial threshold showing, the burden shifts to the nonmoving party “to show that (1) the moving party’s exercise of its right to petition was devoid of any reasonable factual support or any arguable basis in law, and (2) the moving party’s acts caused actual injury to the responding party.” Baker v. Parsons, 434 Mass. 543, 551-552 (2001). The evidentiary standard applied to the non-moving party’s burden was explained in Baker as follows:

The party opposing a special motion to dismiss is required to show by a preponderance of the evidence that the moving party lacked any reasonable factual support or any arguable basis in law for its petitioning activity. This standard places the burden on the non-moving party, as the Legislature intended, but without creating an insurmountable barrier to relief. Id., 553-554.

“It is not enough for the non-moving party to show that the moving party’s petitioning activity was based on an error of law; he must show that no reasonable person could conclude that there was a basis in law for requesting that review.” Id., 554-555, n. 20; see further, Benoit v. Frederickson, 454 Mass. 148, 154, n7 (2009) (“The anti-SLAPP statute requires the judge to consider the pleadings and supporting and opposing affidavits. The question to be determined by a judge in deciding a special motion to dismiss is not which of the parties’ pleadings and affidavits are entitled to be credited or accorded greater weight, but whether the nonmoving party has met its burden (by showing that the underlying petitioning activity by the moving party was devoid of any reasonable factual support or arguable basis in law, and whether the activity caused actual injury to the nonmoving party).”)

If the non-moving party cannot make this showing, it may attempt to meet its burden by showing that its claims “were not brought primarily to chill legitimate petitioning activities but rather to seek damages for the personal harm to it from the defendants’ alleged acts.” Blanchard v. Steward Carney Hosp., 477 Mass. 141, 147 (2017).

B. G&U Defendants Have met their Initial Burden to Show that Plaintiffs' Claims Asserted Against them are Based their Petitioning Activities Alone.

The G&U Defendants easily meet their threshold burden under the Anti-SLAPP statute because they engaged in petitioning activity and the Plaintiffs' claims were brought solely to chill that petitioning activity. The Plaintiffs' claims have no substantial basis in fact or law other than as an effort to chill petitioning.

First, all of the conduct complained of by the Plaintiffs as it relates to the G&U Defendants is petitioning activity. The anti-SLAPP statute defines the "exercise of [the] right of petition" as:

- 1) any written or oral statement made before or submitted to a legislative, executive, or judicial body, or any other governmental proceeding;
- 2) any written or oral statement made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other governmental proceeding;
- 3) any statement reasonably likely to encourage consideration or review of an issue by a legislative, executive, or judicial body or any other governmental proceeding;
- 4) any statement reasonably likely to enlist public participation in an effort to effect such consideration; or
- 5) any other statement falling within constitutional protection of the right to petition government."

G.L.c. 231 § 59H. The statute does not limit the definition of petitioning activities to matters of public concern, and speech involving a commercial motive may be considered petitioning. See North Am. Expositions Co. Ltd. P'ship. v. Corcoran, 452 Mass. 852, 863 (2009).

All of the G&U Defendants' alleged activities fall under the statutory definition of "petitioning activities" because all of their activities related to the Town's consideration of a URP to redevelop the Draper Property, and the G&U Defendants' desired role in redeveloping

the Draper Property. The G&U Defendants are alleged to have spoken with Town officials and prepared writings to Town officials regarding the potential to develop a URP for Hopedale. Such activity is the quintessential example of petitioning activity sought to be protected by the anti-SLAPP statute. Indeed, the activity engaged in by the G&U Defendants falls squarely within all five categories of petitioning activity defined in § 59H. Blanchard, 477 Mass. at 149 (“The archetypical demonstration of this nexus involves a party’s statement regarding an ongoing governmental proceeding made directly to a governmental body.”). The conduct of the G&U Defendants fits squarely into this archetypical example of petitioning activity. Their conduct involved oral statements and written statements “regarding an ongoing governmental proceeding” (the URP) and were made “directly to governmental bod[ies]” (e.g., the Board of Selectmen, the Planning Board, and other municipal and state agencies). Id. The 2AC is replete with allegations identifying classic petitioning activity. See, e.g., 2AC ¶ 89 (Michael Milanoski & Jon Delli Priscoli attend meeting with Town Selectmen and State Senator Ryan Fattman); ¶ 100 (Michael Milanoski obtains 2007 DRC plan and meets for a discussion with Lieutenant Governor Polito); ¶ 101 (Milanoski invites MA EOHED Secretary Jay Ash to meet with him, Selectmen and Town Administrator); ¶ 105 (Milanoski gives PowerPoint presentation to Town Selectmen); ¶ 107 (Milanoski explained plans to state officials); ¶ 110 (Milanoski & Jon Delli Priscoli met with executive session of Selectmen); ¶ 180 (Milanoski allegedly made misrepresentations in “statements to state agencies, state and federal representatives, at public hearings and to the media”); ¶ 197 (at a July 11 meeting, Milanoski gave a presentation of the URP to the Planning Board...). Compare Garabedian v. Westland, 59 Mass. App. Ct. 427 (2003) (finding no petitioning activity where actions were directed toward landowner involved in dispute, rather than as an appeal to governmental authority).

The entirety of the G&U Defendants' conduct was related to the development of the URP and was directed towards influencing and informing the Town of Hopedale, its BOS, its Housing Authority and other boards, commissions, and agencies as it related to the potential to develop the Draper Property, and most significantly, to be named preferred developer. The G&U Defendants attended meetings with Town and state officials regarding the development of the Draper Property. The G&U Defendants offered input with respect to the draft URP. They engaged in no activities privately directed at the Plaintiffs. The G&U Defendants have clearly established that the conduct they have been alleged to have engaged in by the Plaintiffs is petitioning activity under G.L.c. 231 §59H.

Having met the first prong of their threshold burden, the G&U Defendants must next show that the claims against them are based solely on their petitioning activities and that there is no substantial basis to the claims other than or in addition to the petitioning activities. See Duracraft, 427 Mass. at 167-168. This element is also established because, as against the G&U Defendants, the 2AC includes no allegations not directly related to their petitioning activities. All of the allegations pertain to the G&U Defendants' efforts to petition various Town and state officials and agencies to advance the URP and ultimately permit them to develop the Draper Property. See Fabre v. Walton, 436 Mass. 517, 524 (2002) (holding that where plaintiff failed to allege any other wrongful conduct, plaintiff's abuse of process claim was based solely on defendant's petitioning activities and had no other basis).

Perhaps the best comparison to this case is the recent case of Haverhill Stem LLC v. Jennings, 99 Mass. App. Ct. 626 (2021), which involved a dispute between landowners over the permitting of a marijuana dispensary. The proponents of the dispensary sued the adjoining landowner, who had opposed the dispensary and sought to extract a payment from the

proponents for his support. The defendant moved to dismiss pursuant to the Anti-SLAPP statute, and the Appeals Court found that some of the defendant's actions – opposing the plaintiff's dispensary and request for special permit – constituted petitioning activity. Id. at 633. However, the court refused to dismiss the plaintiff's claims because the defendant's actions were not based solely on petitioning activity. Id. at 634-635. The court described a “concerted and extended effort to coerce [the proponent] to pay, “or else” — complete with thinly veiled threats such as that [the proponent] ‘doesn't know who she is dealing with,’” adequately described extortion. Id. at 634. The court concluded that “we are not persuaded that the defendants had free rein to threaten and coerce, as is alleged, simply because they were contemporaneously involved in legitimate petitioning activity.” Id. at 635.

Here, in contrast to Haverhill Stem, LLC, the Plaintiffs do not allege any threatening or coercive conduct by the G&U Defendants. Rather, the Plaintiffs allege that the G&U Defendants' participation in the URP, which may have resulted in the taking of their property, was itself threatening or coercive. Essentially the Plaintiffs believe that if the G&U Defendants' petitioning activities would result in an outcome they do not like, such petitioning activities are per se coercive and threatening to them, and therefore they are free to file suit to chill the G&U Defendants' petitioning. This reasoning is tautological and would eviscerate the purpose of the Anti-SLAPP statute.

C. Plaintiffs Cannot Meet Their Burden.

As the G&U Defendants have met their initial burden under the Duracraft framework, the Plaintiffs must now show, by a preponderance of the evidence, that the petitioning activity of the G&U Defendants (1) was devoid of any reasonable factual or legal support, and (2) caused the Plaintiffs actual injury. Duracraft at 167. “To prevail against a special motion to dismiss, it is not

sufficient to show that the petitioning was based on an error of law. The plaintiff must show that no reasonable person could conclude that there was an arguable basis in law that would support the defendant's position.” North Am. Expositions Co. Ltd. P'ship. v. Corcoran, 452 Mass. 852, 865-866 (2009). On a special motion to dismiss, the Court does not take the Plaintiffs’ characterization of the G&U Defendants’ conduct at face value, “because anti-SLAPP law must account for the defendants’ fundamental rights of speech and petitioning, we must go beyond the labels in the complaint, and examine what the defendants allegedly said and did.” Haverhill Stem LLC at 628. The Plaintiffs fail to meet their burden on multiple fronts.

The Plaintiffs cannot plausibly claim that the G&U Defendants’ petitioning activity was devoid of factual or legal support. Plaintiffs’ primary complaints against the G&U Defendants are (1) the designation of their mill complex property as blighted and subject to an eminent domain taking at a “fraudulently” low value, and (2) the G&U Defendants’ suggestion that they could acquire the mill complex property via “donation” due to its low value. The G&U Defendants’ statements and efforts were well-grounded in both fact and law. First, the Commonwealth’s Urban Renewal Regulations, at 760 CMR 12.04(3), explicitly contemplate that property may be “acquired through donation from either a public or private entity” for purposes of a URP plan. Second, the Plaintiffs cannot seriously claim that there was no arguable basis to conclude that the Draper Property was blighted or of little value. As described in the 2AC, (¶¶ 36-49), the Draper Property was vacant for decades and was dilapidated, filled with hazardous waste and a target for vandals. See also DeWaele Affidavit, ¶¶ 3-10. Although the Plaintiffs averred that they had “substantially improved” the property through years of selective demolition and remediation, they later publicly admitted that it remained severely deteriorated and required total demolition. See DeWaele Affidavit, ¶¶ 4-7. The Plaintiffs’ description of the state of the

Draper Property in the 2AC was, at best, a gross mischaracterization. They cannot argue now that the G&U Defendants' suggestion that the property was blighted and could be donated was "devoid of factual support" when they have recently admitted that "as much as we would have liked to save it... we felt that the liability was greater than any potential benefits." Exhibit D to Affidavit of John DeWaele; see also Dickey v. Warren, 75 Mass.App.Ct. 585, 591-592 (2009) (affirming dismissal of landlord's defamation claim against tenant where landlord later admitted that there were problems in the apartment, despite landlord's claim that tenant made inaccurate statements).

Assuming arguendo that the Plaintiffs somehow convince this Court that the petitioning activity engaged in by the G&U Defendants was devoid of factual or legal support, the Plaintiffs cannot meet their burden in this second stage of the Duracraft framework because they have not suffered any actual injury as a result of any activity engaged in by the G&U Defendants. The Draper Property remains owned by entities controlled by Shwachman. No eminent domain proceedings against the Draper Property have been commenced. The Plaintiffs have partnered with the Worcester Business Development Corporation to develop the subject property. The Plaintiffs simply have suffered no harm by any activity alleged to have been engaged in by the G&U Defendants.⁴

⁴ Frankly, even if the Town of Hopedale had commenced eminent domain proceedings with respect to some, or all of Shwachman's property, Shwachman would be entitled to fair market value for his property, regardless of what the GU Defendants (or any other party) thought the property was worth. The Town of Hopedale could not "steal" the Draper Property from Shwachman. The value of property taken by eminent domain is established as of the date of the taking. See, G.L.c. 121B, which not only contemplates that land takings may be part of the URP but sets forth a procedure to ensure the landowner receives fair market value for the property taken. See § 11 (the URP operating agency shall have the power "to take by eminent domain"), § 47 (urban renewal agency, with consent of the Commonwealth, may "take by eminent domain"). The Regulations promulgated by the Commonwealth also anticipate takings and require that "[t]wo independent appraisals must be submitted for [DHCD] approval prior to the acquisition of any parcel, including parcels acquired by eminent domain." 760 C.M.R. 12.04(1).

Finally, the Plaintiffs will not be able to establish that their claims against the G&U Defendants “were not brought primarily to chill legitimate petitioning activities but rather to seek damages for the personal harm to it from the defendants’ alleged acts.” Blanchard, 477 Mass. at 147. The purpose of the filing of the claims against the G&U Defendants (and other defendants) is to freeze out the G&U Defendants as a potential developer of the Draper Property, should the property be taken by Hopedale by eminent domain. Further, as set forth above the Plaintiffs have suffered no harm due to the activity of the G&U Defendants. Shwachman-controlled entities remain the owners of the Draper Property. There is no allegation that eminent domain proceedings have been commenced. Indeed, the Plaintiffs reached an Agreement for Judgment with the Town permanently withdrawing the URP and limiting the participation of the G&U Defendants from future URPs. Plaintiffs have suffered no harm.

D. The G&U Defendants are Entitled to Their Expenses and Attorney’s Fees.

“If the court grants such special motion to dismiss, the court shall award the moving party costs and reasonable attorney's fees, including those incurred for the special motion and any related discovery matters.” G.L. c. 231, § 59H (emphasis added); Benoit, 454 Mass. at 154 (“Because we conclude that the defendants were entitled to have their special motion to dismiss allowed, they are entitled, as required by G.L. c. 231, § 59H, to an award of their costs and reasonable attorney's fees related to the Superior Court proceedings on their special motion.”). The G&U Defendants request an award of costs and reasonable attorney’s fees should the Court grant their Special Motion to Dismiss.

V. Conclusion

For the reasons set forth herein, Plaintiffs’ claims against defendants, Grafton & Upton Railroad Company, First Colony Group, LLC, Jon Delli Priscoli and Michael Milanoski must be

dismissed pursuant to the Massachusetts anti-SLAPP statute, G.L. c 231 §59H. The G&U Defendants further request that they be awarded their costs and reasonable attorney's fees pursuant to G.L. c 231, §59H, and any additional relief the Court deems appropriate.

Respectfully submitted,

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JON DELLI PRISCOLI and FIRST COLONY
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CERTIFICATE OF SERVICE

I, Andrew P. DiCenzo, Esq., hereby certify that on this 27th day of August, 2021, I caused a copy of the foregoing document to be emailed, pursuant to the Supreme Judicial Court Order concerning email service in cases under Mass. R. Civ. P. 5(b) dated March 30, 2020, to the following counsel of record:

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COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

PHILIP O. SHWACHMAN, MATTHEW W.)
SHWACHMAN, JUDITH L. SHWACHMAN,)
HOPEDALE PROPERTIES, LLC, and)
HOPEDALE INDUSTRIAL CENTER, LLC,)

Plaintiffs)

vs.)

TOWN OF HOPEDALE, TOWN OF HOPEDALE)
BOARD OF SELECTMEN, THOMAS A. WESLEY,)
LOUIS J. ARCUDI, III, BRIAN R. KEYES,)
STEVEN E. SETTE, GRAFTON & UPTON RAILROAD)
COMPANY, JON DELLI PRISCOLI, MICHAEL D.)
MILANOSKI, JASON G. MACDONALD, FIRST)
COLONY GROUP, LLC, DRAPER FALLS, LLC,)
LOBISSER BUILDING CORP., KEVIN LOBISSER,)
HOPEDALE HOUSING AUTHORITY,)
HOPEDALE DOWNTOWN REVITALIZATION)
COMMITTEE, HOPEDALE PLANNING BOARD,)
and DONALD W. HOWES,)

Defendants)

CASE NO. 1885-CV-01781D

**MEMORANDUM IN SUPPORT OF THE DEFENDANTS, GRAFTON & UPTON
RAILROAD COMPANY, JON DELLI PRISCOLI, MICHAEL MILANOSKI, AND
FIRST COLONY GROUP, LLC'S MOTION TO DISMISS**

Defendants Grafton & Upton Railroad Company, Jon Delli Priscoli, Michael Milanoski, and First Colony Group LLC (collectively, the "G&U Defendants") move pursuant to Mass. R. Civ. P. 12(b)(6) to dismiss with prejudice Counts XI through XIV of Plaintiffs' Second Amended Complaint ("2AC"), which are the last remaining Counts in this lawsuit. The Plaintiffs allege in this case that the Town of Hopedale and several of its officials and agencies (the "Municipal Defendants") conspired with various private parties, including the G&U Defendants to wrongfully

take the Plaintiffs' land as part of a proposed Urban Renewal Plan (URP), see G.L. c. 121B. The Plaintiffs salaciously allege that the Municipal Defendants and G&U Defendants devised this URP through which they "secretly plotted and concealed from Shwachman and the public a scheme to create a no-bid public-private partnership to take Shwachman's property by eminent domain and give it to an entity of G&U for no cost." 2AC, ¶ 3. Plaintiffs further allege that Mr. Shwachman was excluded from the URP process despite his request to participate. 2AC ¶¶ 136-146. The Plaintiffs acknowledge, however, as they must, that the URP was never finalized by the Municipal Defendants and never approved by the Massachusetts Department of Housing and Community Development (the "DHCD"), the state agency with final decision-making authority. See 2AC, ¶ 329 ("The Selectmen have expressed their intent to charge ahead full bore with a vote to approve the URP and send it to [DHCD] for approval."); ¶332 (The Selectmen must be immediately enjoined from approving the URP.); ¶332 ("The Selectmen must be immediately enjoined from presenting the URP themselves at a public hearing and/or for a vote, as well as to DHCD for approval.").

The Plaintiffs also acknowledge, as they must, that none of the Plaintiffs' properties was ever taken by the Municipal Defendants. See 2AC, ¶368. In fact, the Plaintiffs only allege that the Defendants caused them damage "by putting the Plaintiffs' Property on a course for an eminent domain taking resulting in chilling of Plaintiffs' ability to market the Property and a current and ongoing loss of value of the Property." Id. (emphasis added). Moreover, while the Plaintiffs fail to inform this Court of this dispositive fact, the proposed URP was withdrawn almost two (2) years ago, in December 2019, in connection with a Settlement Agreement between the Plaintiffs and the Municipal Defendants, which was converted into an Agreement for Judgment, approved by the

Court (Hillman, J.). See, Exhibits 1 and 2, attached hereto.¹ Not only was the URP “that was the crux of the parties initial feuding” (See Exhibit 2, p. 5) withdrawn, it was agreed that Mr. Shwachman would be included in future municipal planning efforts as it relates to development of the subject property.² Id. Accordingly, the complaints and “potential harm” alleged by the Plaintiffs in the 2AC have been resolved, and for that reason alone, the claims against the G&U Defendants should be dismissed.

The claims are furthermore subject to dismissal because it is conclusively established under state and federal law that a cause of action related to an eminent domain taking does not arise at least until the time the taking actually occurs. See Knick v. Township of Scott, Pennsylvania, 139 S. Ct. 2162, 2170 (2019); Cayon v. City of Chicopee, 360 Mass. 606, 612 (1971). Similarly, it is clearly established that “the mere determination by a governmental authority that a particular area of real estate is ‘blighted’ as an initial step in an urban renewal project is not a constructive taking.” See Trager v. Peabody Redev. Auth., 367 F.Supp. 1000, 1002 (D. Mass. 1973). Takings under a municipality’s eminent domain authority give the property owner a right to compensation for the fair market value of the property actually taken. G.L.c. 79, § 12; Aselbekian v. Massachusetts Turnpike Auth., 341 Mass. 398, 400 (1960). No rights or remedies are created by the mere

¹ This Court may take judicial notice of the record of this case, including the Joint Motion for Entry of Agreement of Judgment filed by the Plaintiffs and the Municipal Defendants, and the Court’s Memorandum of Decision and Order dated May 19, 2021, allowing, inter alia, the Joint Motion for Entry of Judgment. See, Mass. G. Evid., 201; Schaer v. Brandeis Univ., 432 Mass. 474, 477 (2000)(“In evaluating a rule 12 (b) (6) motion, we take into consideration the allegations in the complaint, although matters of public record, orders, items appearing in the record of the case, and exhibits attached to the complaint, also may be taken into account.”); Reliance Ins. Co. v. Boston, 71 Mass. App. Ct. 550, 555 (2008)(“Properly considered public records include the records of other courts in related proceedings, of which the judge may take judicial notice in any event.”)

² Plaintiffs also fail to assert in their 2AC that Mr. Shwachman has been serving on Hopedale’s Master Plan Steering Committee. See Exhibit 3 attached hereto, which is a true and accurate copy of a posting on the Town of Hopedale’s website: <https://www.hopedale-ma.gov/master-plan-steering-committee>. For the reasons set forth at footnote 1, supra, this Court may take judicial notice of matters of public record, and Exhibit 3 is a public record. The Plaintiffs make multiple references to Hopedale’s Master Plan in their 2AC, but interestingly do not reveal that Mr. Shwachman is on the Master Plan Steering Committee. See, 2AC, ¶¶59-60, 63, 174, 195, 217.

discussion or consideration of a taking. Boston Edison Co. v. Massachusetts Water Resources Authority, 459 Mass. 724, 740-741 (2011) (“[A] property owner is entitled to damages caused by an actual taking or by the public improvement for which the taking is made; the owner is not entitled to damages caused by plans for a taking that the government does not carry out.”); Athanasiou v. Town of Westhampton, 30 F. Supp. 3d 84, 91 (D. Mass. 2014), relying on Boston Edison Co., supra (“public announcements of plans to take property by eminent domain do not entitle property owners to damages, even if such announcements result in a decrease in property values...”). The absence of damages and the statutory remedy of an eminent domain claim bar the Plaintiffs’ claims here. Any loss of Plaintiffs’ right to develop the property, which Plaintiffs have not exercised in their 30 years of ownership, occasioned by a hypothetical future taking under the now-defunct URP would nevertheless have been justly compensated through the eminent domain process. See, G.L.c. 121B; footnote 4, infra. By filing suit before any eminent domain taking actually occurred, the Plaintiffs ignored the decades of controlling authority that establishes that no claim yet exists. The scandalous, conspiratorial allegations of the 2AC are merely a cumbersome distraction from this fundamental point. Plaintiffs’ claims have no basis in law, are frivolous, and must be dismissed with prejudice.

PROCEDURAL BACKGROUND

The Plaintiffs filed this action on November 20, 2018. Their initial 80-page complaint set forth sixteen counts against the various municipal defendants and the G&U Defendants, including two counts bringing federal civil rights and constitutional claims. The defendants removed the case to the United States District Court for the District of Massachusetts, asserting federal question jurisdiction due to the inclusion of the federal claims. Once in federal court, the G&U Defendants filed a special motion to dismiss under the Massachusetts Anti-SLAPP statute, alleging that the

Plaintiffs brought their claims based solely on the G&U Defendants' petitioning activities regarding the potential opportunity to develop real estate in Hopedale. Plaintiffs then amended their complaint. The G&U Defendants later answered and moved for judgment on the pleadings.

In December 2019, Plaintiffs reached a settlement agreement with the Municipal Defendants. The settlement agreement between the plaintiffs and the municipal defendants entered as an Agreement for Judgment in this case. See, Exhibits 1 and 2 attached hereto. Plaintiffs then declined to seek to prove their federal claims and moved to voluntarily withdraw and dismiss them with prejudice to defeat federal jurisdiction and remand the case back to the Superior Court. On May 19, 2021, the District Court dismissed the federal claims, declined to exercise supplemental jurisdiction, and ordered the case to be remanded. See, Exhibit 2. The District Court did not decide the G&U Defendants' Motion for Judgment on the Pleadings or Anti-SLAPP Motion. Following the remand, Plaintiffs filed the 2AC. The G&U Defendants bring this motion to renew their arguments for a merits-based dismissal of Plaintiffs' frivolous claims.³

ARGUMENT

I. Standard on Motion to Dismiss.

Massachusetts Rule of Civil Procedure 12(b)(6) permits the Court to dismiss a complaint for failure to state a claim upon which relief may be granted if "it appears beyond doubt that the Plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Nader v. Citron, 372 Mass. 96, 97-98 (1977), quoting Conley v. Gibson, 355 U.S. 41, 45-46 (1957). In reviewing the sufficiency of a complaint under Mass. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief can be granted, the Court takes as true "the allegations of the complaint, as well as such inferences as may be drawn therefrom in the Plaintiff's favor..."

³ The G&U Defendants also are renewing their Anti-SLAPP Motion before this Court.

Iannacchino v. Ford Motor Co., 451 Mass. 623, 625 n. 7 (2008). “What is required at the pleading stage are factual ‘allegations plausibly suggesting (not merely consistent with)’ an entitlement to relief...” Id. at 636, quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 557 (2007). “The rule that we accept [the Plaintiff’s] well-pleaded factual averments and indulge every reasonable inference hospitable to [his] case does not entitle [him] to rest on subjective characterizations or conclusory descriptions of a general scenario which could be dominated by unpleaded facts.” Id. (internal quotations omitted). “[W]hile the allegations of the complaint generally control in evaluating a motion under rule 12(b)(6), matters of public record, orders, items appearing in the record of the case, and exhibits attached to the complaint, also may be taken into account. Properly considered public records include the records of other courts in related proceedings, of which the judge may take judicial notice in any event.” Reliance Ins. Co. v. Boston, 71 Mass. App. Ct. 550, 555 (2008)(internal quotations and citations omitted).

II. Relevant Principles of Eminent Domain Takings and URPs.

A. Purpose of Urban Renewal Programs.

Urban Renewal Programs were created and authorized by the Massachusetts legislature in order to “eliminat[e] decadent, substandard, or blighted open” areas and to promote sound community growth.” See Mahajan v. Dep’t of Env’tl. Prot., 464 Mass. 604, 606 (2013), quoting M.G.L. c. 121B, § 45. URPs permit municipal agencies to take blighted land by eminent domain. See Benevolent & Protective Order of Elks, Lodge No. 65 v. Planning Bd. of Lawrence, 403 Mass. 531, 540 (1988) (Order of Elks). Such takings, made to eliminate blighted areas, are considered to be for a public purpose. See id. This is true even if the taking benefits private landowners. See id.; see also Cobble Hill Ctr. LLC v. Somerville Redev. Authority, 487 Mass. 249, 264 n. 15 (2021).

The URP process set forth in Chapter 121B is “lengthy and robust.” See Pishev v. Somerville, 95 Mass. App. Ct. 678, 684 (2019), review denied, 483 Mass. 1106 (2019). The process requires that a URP be approved at the local level before being submitted to the DHCD for its review and approval. The DHCD must hold a public hearing on the application if requested to do so by the urban renewal agency, the mayor, city council, selectmen or twenty-five or more taxable inhabitants of the town. Decisions made during the URP process are legislative, not judicial. See id.; see also Trager, 367 F.Supp. at 1002 (“In eminent domain cases, the broad decision to condemn an area for a public purpose, e.g., urban renewal in a blighted area, is legislative and does not require an adjudicative hearing with notice and an opportunity to be heard provided to each individual affected.”).⁴

B. “Potential” Eminent Domain Takings are Not Actionable.

The law is clear that there is no remedy available to a landowner, such as Plaintiffs, whose property was merely designated correctly, three years ago, as blighted and identified for potential inclusion in a URP. This is true because a designation as blighted – even if it diminishes property value – does not constitute a taking. In Cayon v. Chicopee, 360 Mass. 606, 608 (1971), the Supreme Judicial Court stated:

We believe that the allegations in the petition that the [City and redevelopment authority]’s actions in announcing that the petitioner’s land would be taken for urban renewal purposes and in failing to execute the takings, thereby decreasing the value of his property and depriving him of the opportunity to use or sell the land or pay the taxes levied upon it, do not disclose a ‘taking’ for which compensation must be paid.

Two years later, in 1973, the SJC reaffirmed this holding, stating:

⁴ Chapter 121B not only contemplates that land takings may be part of the URP but sets forth a procedure to ensure the landowner receives fair market value for the property taken. See § 11 (the URP operating agency shall have the power “to take by eminent domain”), § 47 (urban renewal agency, with consent of the Commonwealth, may “take by eminent domain”). The Regulations promulgated by the Commonwealth also anticipate takings and require that “[t]wo independent appraisals must be submitted for [DHCD] approval prior to the acquisition of any parcel, including parcels acquired by eminent domain.” 760 C.M.R. 12.04(1).

As the Cayon case plainly shows, the circumstances surrounding urban renewal and urban redevelopment require advance planning and disclosure, and even public announcements of proposed action which result in decreases in property values are not by themselves compensable takings.

Fram v. Boston, 363 Mass. 68, 72 (1973). This proposition has been repeatedly cited. See Pishev, 95 Mass.App.Ct. at 686, n. 17 (quoting with approval Fram and Cayon); Marietta Realty, Inc. v. Springfield Redev. Authority, 902 F.Supp.310, 313 (D. Mass. 1995) (“The defendant’s public announcement of its intent to acquire the plaintiffs’ property, and its failure to do so, do not constitute a ‘taking’ of the plaintiffs’ property”); Trager, 367 F.Supp. at 1002 (“The initial steps in any condemnation proceeding, although such steps diminish the value of the property concerned, themselves do not require compensation.”); Boston Edison Co., 459 Mass. at 740-741; Athanasiou, 30 F.Supp.3d at 91. In sum, public announcement of a potential taking is not considered a taking and is not compensable because such designations are a necessary part of urban renewal planning.

III. Each Count Against Each G&U Defendant Must Be Dismissed.

All of Plaintiffs’ claims against the G&U Defendants are premised on a threatened eminent domain taking set forth in an unapproved draft of a URP that was prepared in 2018 and which has been withdrawn and deemed null and void for almost two years. As set forth above, threatened or potential takings are not actionable; therefore, Plaintiffs are unable to show that any G&U Defendant caused them any damage. Accordingly, each of the 2AC’s Counts against each of the G&U Defendants must be dismissed.

A. The G&U Defendants Did Not Violate the Massachusetts Civil Rights Act Because Plaintiffs Were Deprived of No Rights and Were Not Threatened, Intimidated or Coerced.

To establish a claim under the Massachusetts Civil Rights Act (“MCRA”), the plaintiffs must demonstrate: "(1) the exercise or enjoyment of some constitutional or statutory right; (2) has

been interfered with, or attempted to be interfered with; and (3) such interference was by threats, intimidation, or coercion." Currier v. National Bd. of Med. Examiners, 462 Mass. 1, 12 (2012). The MCRA "was not intended to create, nor may it be construed to establish, a vast constitutional tort." Buster v. George W. Moore, Inc., 438 Mass. 635, 645–46 (2003) (quotation omitted).

The 2AC does not identify a protectable right to participate in the URP process in its early stages, Trager, 367 F.Supp. at 1002, and even if such a right existed, there are no allegations that the G&U Defendants interfered with that right. The G&U Defendants do concede however, that the Plaintiffs have a right to use and enjoy their own property and thus, have met the first prong of establishing an MCRA violation. Haufler v. Zotos, 446 Mass. 489, 504 (2006). The problem for the Plaintiffs is the second and third prong. Plaintiffs cannot establish that these rights have been interfered with by the G&U Defendants, never mind that these rights were interfered with by threats, intimidation or coercion.

Indeed, the 2AC does not appear to allege that the G&U Defendants used threats or intimidation to interfere with their constitutional and/or statutory rights, but rather that the G&U Defendants used only economic coercion to interfere with these rights.⁵ It is expected that the Plaintiffs will rely on Buster, *supra*, to support their economic coercion argument, but Buster does not offer any assistance to the Plaintiffs. While the SJC in Buster certainly recognized that "in certain circumstances, economic coercion, standing alone, may be actionable under the [MCRA]", Buster, at 648, the circumstances presented by the Plaintiffs' 2AC do not give rise to the level of

⁵ In the entire 101-page 2AC, the only allegation of a "threat" made directly against the Plaintiffs is in paragraph 235, in which Plaintiffs allege that at an October 2018 meeting "the Planning Board had a police officer standing watch[... and] threatened to have Shwachman removed by the police officer when he tried to address the Planning Board." Whether or not this conduct amounts to a threat that is actionable under the MCRA, the pleadings establish that it was not made by any of the G&U Defendants. In fact, there is no allegation in the entire 2AC showing interactions directly between any of the Plaintiffs and any of the G&U Defendants. Plaintiffs allege that Mr. Milanoski referred to Mr. Shwachman, as a "bully" was somehow coercive against Mr. Shwachman. Such a statement of opinion is hardly actionable under the MCRA.

being coercive. The standard for determining whether conduct constitutes coercion (or threats, and intimidation) is an objective, reasonable person standard. Haufler, at 505. “Coercion” has been defined to mean “the application to another of such force, either physical or moral, as to constrain him to do against his will something he would not otherwise have done.” Buster, at 646.

Against this back drop, a review of Plaintiffs’ 2AC establishes that it is completely void of any allegations that the Plaintiffs were constrained “to do against [their] will something [they] would not otherwise have done.” Id.⁶ Indeed, the opposite is alleged. The Plaintiffs, led by Mr. Shwachman and his counsel wrote letters and attended hearings to vigorously and zealously defend his property interests and to demand that the URP process stop immediately. 2AC ¶¶ 200, 206, 231-234, 245, 272; Exhibits 35-38, 40, 42.

Rather, Plaintiffs assert that their protected rights were interfered with through the URP process in 2018 by the G&U Defendants attempting to take their properties. Putting aside the fact that the G&U Defendants had no ability to take the Plaintiffs’ properties through a URP (or through any other means), the 2AC does not allege that any property was ever actually taken by the Town of Hopedale (or anyone). Furthermore, any taking would have been a direct deprivation of rights and not actionable under the MCRA. See Order of Elks, 403 Mass. at 558-560; Pheasant Ridge Associates Ltd. Partnership v. Town of Burlington, 399 Mass. 771, 781 (1987); see also Swanset Dev. Corp. v. Taunton, 423 Mass. 390, 396 (1996) (Municipality’s delay in approving development plans, even if deliberately done to frustrate plaintiff, would be a direct deprivation of rights rather than an attempt at coercion). This would be true even if, as Plaintiffs allege (and the

⁶ Plaintiffs allege that the G&U Defendants attempted to coerce them into donating the property, but it is undisputed that plaintiffs did not donate their property. 2AC, ¶171. Further, the URP regulations allow for donation of property and any such donation could only have been made voluntarily. See, 760 CMR 12.04(3). Plaintiffs also allege at paragraphs 149 and 150 that Milanoski went to the state DEP in an attempt to “gin up a compliance issue against Shwachman.” Even if true, this is not actionable coercion because it was not an attempt to force Shwachman to do, or not do, anything. Such conduct is lawful and is merely an attempt to petition for the redress of grievances. See Haufler v. Zotos, 446 Mass. 489, 506 (2006).

G&U Defendants dispute), the taking was done in bad faith and ultimately invalidated. See Pheasant Ridge, 399 Mass. at 781. The Plaintiffs' rights were not interfered with by any defendant, but certainly not by the G&U Defendants. And again, assuming arguendo, that their rights were interfered with, the Plaintiffs have not alleged that they were coerced into doing anything against their will. Count XI must be dismissed.

Since the G&U Defendants did not deprive the Plaintiffs of any rights, and did not threaten, coerce, or intimidate the Plaintiffs, Count XI must be dismissed.

B. Plaintiffs' G.L. 93A 11 Claim (Count XII) Fails

General Laws c. 93A, § 11, states, in relevant part:

Any person who engages in the conduct of any trade or commerce and who suffers any loss of money or property, real or personal, as a result of the use or employment by another person who engages in any trade or commerce of an unfair method of competition or an unfair or deceptive act or practice . . . may . . . bring an action in the superior court . . . for damages and such equitable relief . . . as the court deems to be necessary and proper.

"It is well established that a practice or act [is] unfair under G. L. c. 93A, § 2, if it is (1) within the penumbra of a common law, statutory, or other established concept of unfairness; (2) immoral, unethical, oppressive, or unscrupulous; or (3) causes substantial injury to competitors or other business people. Although whether a particular set of acts, in their factual setting, is unfair or deceptive is a question of fact . . . the boundaries of what may qualify for consideration as a c. 93A violation is a question of law." Milliken & Co. v. Duro Textiles, LLC, 451 Mass. 547, 562-563 (2008).

"[B]usinesses seeking relief under Section 11 are held to a stricter standard than consumers in terms of what constitutes unfair or deceptive conduct" Giuffrida v. High Country Investor, Inc., 73 Mass. App. Ct. 225, 238 (2008). Objectionable conduct under chapter 93A must rise to "a level of rascality that would raise an eyebrow of someone inured to the rough and tumble world

of commerce." Levings v. Forbes & Wallace, Inc., 8 Mass. App. Ct. 498, 504 (1979). In other words, to state a claim against any of the G&U Defendants under §11, the Plaintiffs must allege facts plausibly suggesting that they and the G&U Defendants were engaged in trade or commerce with each other, the G&U Defendants used an unfair method of competition or an unfair or deceptive practice, and in doing so they caused the Plaintiffs to suffer a loss of money or property. First Enters. v. Cooper, 425 Mass. 344, 347 (1997) ("Thus, to survive the defendant's motion to dismiss, the plaintiffs must show that the defendant had a commercial relationship with the plaintiffs or that the defendant's actions interfered with trade or commerce."); See further, Steele v. Kelley, 46 Mass. App. Ct. 712, 726 (1999) ("It is clear as matter of law that, for a violation of G. L. c. 93A, §§ 2 and 11, the acts or practices complained of must be perpetrated in a business context; that no c. 93A, § 11, claim can be maintained if no commercial relationship -- i.e., that of buyer and seller of goods or services -- ever existed between the parties; that internal disputes that are intra-enterprise, i.e., between parties in the same venture, do not fall within the scope of c. 93A, § 11; and that the actions of a trustee, executor, or administrator in executing fiduciary responsibilities do not constitute trade or commerce or involve the requisite commercial marketplace transactions to bring them within c. 93A."); Rafferty v. Merck & Co., 479 Mass. 141, 162, n. 7 ("Unlike claims under § 9, claims under § 11 require not only that the defendant's conduct occur in "trade or commerce" but also that there be a commercial transaction between the parties.") See Linkage Corp. v. Trustees of Boston Univ., 425 Mass. 1, 22-23, cert. denied, 522 U.S. 1015, 118 S. Ct. 599, 139 L. Ed. 2d 488 (1997).

In their vast 100 page and 394 paragraph 2AC, the Plaintiffs have failed to allege any commercial relationship between themselves and any of the G&U Defendants as it relates to the failed URP. Indeed, the opposite is alleged. It is alleged that the Plaintiffs were not invited by the

Municipal Defendants (and apparently the G&U Defendants) to participate in the URP process. No business or commercial relationship is alleged, and this is fatal to the Plaintiffs' Section 11 claim. L.B. Corp. v. Schweitzer-Mauduit Int'l, Inc., 121 F. Supp. 2d 147, 152 (D. Mass. 2000) (“The parties' only relationship, defendants contend, was as abutting landowners, so the statute is inapplicable.”).

Count XII fails for another reason. As noted in the recent Supreme Judicial Court decision in Cobble Hill Center, LLC v. Somerville Redevelopment Authority, 487 Mass 249, 250-251 (2021), G.L.c. 121B §45 sets out the urban renewal programs declaration of necessity:

It is hereby declared that ... the redevelopment of land in decadent, substandard and blighted open areas in accordance with a comprehensive plan to promote the sound growth of the community is necessary in order to achieve permanent and comprehensive elimination of existing slums and substandard conditions and to prevent the recurrence of such slums or conditions or their development in other parts of the community ... ; that the acquisition of property for the purpose of eliminating decadent, substandard or blighted open conditions thereon and preventing recurrence of such conditions in the area, ... are public uses and purposes for which public money may be expended and the power of eminent domain exercised; and that the acquisition, planning, clearance, conservation, rehabilitation or rebuilding of such decadent, substandard and blighted open areas for residential, governmental, recreational, educational, hospital, business, commercial, industrial or other purposes, ... are public uses and benefits for which private property may be acquired by eminent domainThe necessity in the public interest for the provisions of this chapter relating to urban renewal projects is hereby declared as a matter of legislative determination.

URPs have been encouraged by the Legislature. Id. There is nothing untoward, unfair, unlawful or impermissible about petitioning local and state government to be part of a URP that a municipality is considering. But, again, the sole basis for the c. 93A claim is that the G&U Defendants did just that – they participated in this statutorily authorized URP process initiated by the Town of Hopedale and if that URP process was ultimately approved by the Town and DHCD (which it was not), the Plaintiffs' property would likely be taken by the Town through eminent domain. The Plaintiffs further complain that the G&U Defendants improperly sought to interject

itself into the URP process so that it would be designated as the preferred developer of any project that arose from a URP should the URP be approved by the Town and DHCD. This conduct does not rise to the " level of rascality that would raise an eyebrow of someone inured to the rough and tumble world of commerce." Levings, 8 Mass. App. Ct. 498, 504 (1979). See, further, Melo-Tone Vending, Inc. v. Sherry, Inc., 39 Mass. App. Ct. 315, 319 (1995)("For competition and for the rough and tumble world of commerce, there is tolerance... even though the fallout of that rough and tumble is damage to one of the competitors."). Thus, assuming arguendo, Plaintiffs had sufficiently alleged a commercial relationship with the G&U Defendants, the alleged unfair business practices fall woefully short of what is required to maintain a Section 11 claim. Count XII must be dismissed.

C. Count XIII Alleging Tortious Interference with Advantageous Business Relationship Must be Dismissed Because, Inter Alia, Plaintiffs Cannot Prove Damages.

To prevail on a claim for tortious interference with an advantageous business relationship, a plaintiff must prove "(1) he had an advantageous relationship with a third party; (2) the defendant knowingly induced a breaking of the relationship; (3) the defendant's interference with the relationship, in addition to being intentional, was improper in motive or means; and (4) the plaintiff was harmed by the defendant's actions." Hamann v. Carpenter, 937 F.3d 86, 92-93 (1st Cir. 2019), relying on Blackstone v. Cashman, 448 Mass. 255, 260 (2007).

At paragraphs 379-384 of their Amended Complaint, Plaintiffs purport to allege sufficient facts to support their claim that the G&U Defendants interfered with their advantageous relationships with the Town of Hopedale and unidentified third parties. However, these paragraphs simply allege in conclusory fashion the elements of a tortious interference with advantageous relationship claim. When deciding a motion to dismiss under Rule 12(b)(6), a court must "look

beyond the conclusory allegations in the complaint and focus on whether the factual allegations plausibly suggest an entitlement to relief." Maling v. Finnegan, Henderson, Farabow, Garrett & Dunner, LLP, 473 Mass. 336, 339 (2015), quoting Curtis v. Herb Chambers I-95, Inc., 458 Mass. 674, 676 (2011). The reviewing court must only accept as true the facts alleged in the complaint, not any "legal conclusions cast in the form of factual allegations." Sandman v. Quincy Mut. Fire Ins. Co., 81 Mass. App. Ct. 188, 189 (2012).

In an attempt to meet the requirement to sufficiently allege the existence of an advantageous relationship with the Town, Plaintiffs appear to rely solely on their allegation that they own property in Hopedale and that they had engaged with Hopedale officials in prior years regarding the potential development of their land. See, e.g., 2AC, ¶¶ 50-69. Plaintiffs appear to assert that every property owner in Hopedale has an advantageous relationship with that governmental body. Plaintiffs can cite to no case law to support this preposterous position. Plaintiffs have failed to meet the first element of a tortious interference with advantageous relationship claim and thus, Count XIII should be dismissed on that ground alone.

Assuming, arguendo, Plaintiffs have properly and sufficiently alleged the existence of an advantageous relationship with Hopedale, they do not allege that the advantageous relationship has been broken as a result of any conduct of the G&U Defendants. In fact, they allege that seven years prior to the commencement of the URP "[t]he Town made no further efforts to partner with Shwachman to develop property or to engage Shwachman on his intention to renovate the Property." 2AC ¶68. Thus, Plaintiffs' own allegations establish that to the extent there was an advantageous relationship with the Town before 2017, it was broken by the Town well before the Town initiated the URP process in 2017. Id. Plaintiffs have failed to allege sufficient facts to support the second element of a tortious interference claim. Buster, 438 Mass. at 652 ("intentional

interference with advantageous relations requires defendant to induce third party into not continuing business relationship with plaintiff”).

The Plaintiffs have also failed to sufficiently allege that the G&U Defendants induced the Town of Hopedale to terminate its relationship with the Plaintiffs. Indeed, as set forth in Exhibits 1 and 2 attached hereto, the Plaintiffs have entered into a Settlement Agreement with the Town of Hopedale, which requires, inter alia, the Plaintiffs and the Town to work together towards developing the subject property. This Settlement Agreement was entered as an Agreement for Judgment by United States District Judge Hillman on May 19, 2021. In apparent compliance with this Settlement Agreement, Mr. Shwachman serves on the Town’s Master Plan Steering Committee. See Exhibit 3. The relationship between the Plaintiffs and the Town of Hopedale is hardly broken, but is strong and intact.

Lastly, the Plaintiffs’ tortious interference with advantageous business relationship also fails because they will not be able to prove that they have suffered any harm on account of anything the G&U Defendants did or did not do. It is well-established that a plaintiff cannot recover on a claim for tortious interference with advantageous relationships claim absent a showing of a pecuniary loss as a result of the defendant’s conduct. Hamann, at 93, quoting Tech Plus, Inc. v. Ansel, 59 Mass. App. Ct. 12, 18-19 (2003). Other than stating that they have been “harmed and continue to suffer harm, as a result of the Defendants’ actions”, Plaintiffs have not articulated a specific pecuniary loss that they have suffered. Accordingly, Count XIII of the Plaintiff’s 2AC must be dismissed.

D. Plaintiffs Fail to Allege a Viable Civil Conspiracy Claim.

In Count XIV, Plaintiffs allege that the various municipal defendants, along with the other named defendants (including the G&U Defendants) "acted in concert and joined together in an unlawful and unfair manner, pursuant to a common design, to threaten, coerce, intimidate and

injure plaintiffs." 2AC, ¶ 386. Plaintiffs further allege a conspiracy to "violate Plaintiff's constitutional right to use and enjoy their property." Id. at ¶ 388. Plaintiffs conclude that they "have been prevented from enjoyment of their fundamental property rights and have suffered substantial monetary losses." Id. at ¶ 392. Again, Plaintiffs simply make conclusory allegations, which they attempt to frame as factual allegations, to support a hollow unsupportable cause of action, which alone requires dismissal of Count XIV.

Addressing the merits of Count XIV, Massachusetts courts recognize two different theories of civil conspiracy. First, "coercive" civil conspiracy requires that a plaintiff allege the defendants, acting in unison, had some peculiar power of coercion over the plaintiff, which they would not have had if they acted independently. See Kurker v. Hill, 44 Mass. App. Ct. 184, 188 (1998). This "coercive" civil conspiracy claim is a "very limited cause of action." Aetna Cas. Sur. Co. v. P & B Autobody, 43 F.3d 1546, 1563 (1st Cir. 1994). "The most common illustration of such a conspiracy is to be found in the combined action of groups of employers or employees, where through the power of combination pressure is created and results brought about different in kind from anything that could have been accomplished by separate individuals." Fleming v. Dane, 304 Mass. 46, 50 (1939). The second theory requires that "a plaintiff must demonstrate that a combination of persons [acted] pursuant to an agreement to injure the plaintiff." Gutierrez v. Mass. Bay Transportation Authority, 437 Mass. 396, 415 (2002); Kurker, 44 Mass. App. Ct. at 189-190. Both variants require proof of damages in order for a recovery to lie.

Plaintiffs fail to sufficiently allege either form of civil conspiracy for a number of reasons. First, with respect to the "coercive" conspiracy claim, Plaintiffs have not alleged how they were coerced into doing anything by any of the G&U Defendants. Nor have they alleged that any

combination of the defendants held a coercive power over them. To the contrary, Plaintiffs aggressively asserted their opposition to the proposed draft URP, and were ultimately successful in killing the proposed URP. See, 2AC, ¶¶136, 179, 200, 206, 231 – 235, 239, 245, 252, Exhibits 35-38, Exhibit 40, Exhibit 42; See also, Exhibits 1 and 2 attached hereto. Plaintiffs were not coerced by anyone during the URP process.

With respect to the second form of civil conspiracy, which requires 1) a common design or an agreement, between two or more persons to do a wrongful act and, 2) proof of some tortious act in furtherance of the agreement, assuming arguendo, that the 2AC sufficiently alleges a common design or agreement between the G&U Defendants and others to do a wrongful act, Plaintiffs second conspiracy claim fails because they have failed to allege underlying tortious activity to do a wrongful act. See, Sections III, A, B, C, supra.

Furthermore, both civil conspiracy variants fail because the Plaintiffs have suffered no damages. The subject property was never taken by the Town (or anyone) by eminent domain or by any other means. The principal plaintiff, Mr. Shwachman, is a member of the Town's Master Plan Steering Committee. See, Exhibit 3 attached hereto. The only damages alleged by the Plaintiffs herein are those arising out of the alleged conspiracy to use the URP process to deprive Plaintiffs of their property. For the reasons set forth above, the property was never taken, and this is not a compensable claim. The failure of the Plaintiffs to assert an actual deprivation of rights bars their claims for civil conspiracy.

CONCLUSION

For the reasons set forth, the Court should grant the G&U Defendants' Motion and dismiss Counts XI through XIV of Plaintiffs' Second Amended Complaint, with prejudice.

Respectfully submitted,
GRAFTON & UPTON RAILROAD COMPANY,
JON DELLI PRISCOLI and FIRST COLONY
GROUP, LLC,
By their attorneys,

/s/ Donald C. Keavany
Donald C. Keavany, Jr., BBO# 631216
Andrew P. DiCenzo, BBO#689291
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MICHAEL D. MILANOSKI,

By: /s/ William M. Pezzoni
William M. Pezzoni, BBO #397540
DAY PITNEY LLP
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Boston, MA 02110
Tel. (617) 345-4600
Fax (617) 345-4745
wpezzoni@daypitney.com

CERTIFICATE OF SERVICE

I, Andrew P. DiCenzo, Esq., hereby certify that on this 27th day of August, 2021, I caused a copy of the foregoing document to be emailed, pursuant to the Supreme Judicial Court Order concerning email service in cases under Mass. R. Civ. P. 5(b) dated March 30, 2020, to the following counsel of record:

David E. Lurie
Harley C. Racer
Lurie Friedman LLP
One McKinley Square
Boston, MA 02109

/s/ Andrew P. DiCenzo



TOWN OF HOPEDALE
78 Hopedale Street - P.O. Box 7
Hopedale, Massachusetts 01747
Tel: 508-634-2203 Fax: 508-634-2200
www.hopedale-ma.gov

BOARD OF SELECTMEN

Brian R. Keyes, Chair
Louis J. Arcudi, III
Glenda Hazard

Town Administrator

Diana M. Schindler

September 10, 2021

Rajan P. Nanda, Director
Full Circle Technologies
11 Beacon Street, Ste 340
Boston, MA 02108

Re: Notice of Award, Electronic Permitting
Town of Hopedale

Dear Mr. Nanda:

This is to inform you that the Town of Hopedale has awarded the Electronic Permitting Project to your firm in accordance with your bid submitted on July 21, 2021. After the Town's review of the materials and our negotiations, attached is the final award information including modules and support costs the Town is committing to for the scope of this project. The Town is interested in securing additional modules in the future as we discussed. For this project, the final award amount is \$48,295, which includes the one-time implementation amounts, as well as half of the annual support amount since implementation date will be January 1, 2022, or thereabouts.

Attached is a draft contract agreement as presented in the Request for Proposal documents. Please review and let me know if you have any concerns or changes made.

Very truly yours,

Diana M. Schindler
Town Administrator/CPO

Full Circle Pricing Response for PermitEyes Departmental Modules

Department	One Time	Annual
Building	8500	3270
Board of Health	8500	3270
Fire Prevention	6110	2350
Open Burning	2830	1090
Con Com	7300	2810
GIS integration	1900	550
Assessory Tablet program for Building Module	2900	1170
Assessors System Integration Option	<u>2700</u>	<u>600</u>
	40740	15110

7555 Due in FY22

48295 Total Contract Amount

Online Payments Included
 Remote Dept Staff Training Included



TOWN OF HOPEDALE
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Hopedale, Massachusetts 01747
Tel: 508-634-2203 Fax: 508-634-2200
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BOARD OF SELECTMEN

Brian R. Keyes, Chair
Louis J. Arcudi, III
Glenda Hazard

Town Administrator

Diana M. Schindler

September 7, 2021

Ms. Danielle Marini
Associate Environmental Planner
CMRPC
One Mercantile Street, Suite 520
Worcester, MA 01608

Re: Notice of Award
FEMA Hazardous Mitigation Plan Update

Dear Ms. Marini:

This is to inform you that the Town of Hopedale has awarded the Hazardous Mitigation Plan Update to your firm in accordance with your bid submitted on August 31, 2021, in the amount of \$15,999.

I look forward to receiving the contract agreement for our signatures and to proceed with planning efforts.

Very truly yours,

Diana M. Schindler

Diana M. Schindler
Town Administrator/CPO

**TOWN OF HOPEDALE, MASSACHUSETTS
HOPEDALE PUBLIC SCHOOLS
INDEPENDENT ACCOUNTANTS' REPORT
ON APPLYING AGREED-UPON PROCEDURES
YEAR ENDED JUNE 30, 2020**

**HOPEDALE PUBLIC SCHOOLS
HOPEDALE, MASSACHUSETTS
JUNE 30, 2020**

CONTENTS

	<u>PAGE</u>
Independent Accountants' Report on Applying Agreed-Upon Procedures	1
Specific Compliance Requirements	2 – 6
Findings and Recommendations	7 - 10

ROBERT E. BROWN II, CPA

**CERTIFIED PUBLIC ACCOUNTANT
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Mendon, Massachusetts 01756**

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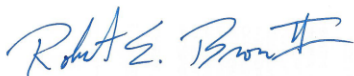
**INDEPENDENT ACCOUNTANTS' REPORT
ON APPLYING AGREED-UPON PROCEDURES**

To the Honorable Members of the School Committee
And the Honorable Board of Selectmen
Town of Hopedale, Massachusetts

We have performed the procedures enumerated in the attached appendix, which were agreed to by the management of the Town of Hopedale, Massachusetts, (the "Town") and the Hopedale Public Schools, solely to assist you in evaluating the completeness and accuracy of Town's Massachusetts Department of Elementary and Secondary Education (the "Department") End-of-Year Financial Report for the year ended June 30, 2020, and to demonstrate the Town's compliance with the requirements for preparing that report as specified by the Department. The Town of Hopedale and the Hopedale Public Schools' management are responsible for the End-of-Year Financial Report for the year ended June 30, 2020. This agreed-upon procedures engagement was performed in accordance with attestation standards established by the American Institute of Certified Public Accountants. The sufficiency of these procedures is solely the responsibility of the specified users of the report. Consequently, we make no representation regarding the sufficiency of the procedures described in the accompanying appendix that follows either for the purpose for which this report has been requested or for any other purpose.

We were not engaged to, and did not conduct an audit, the objective of which would be the expression of an opinion on the completeness and accuracy of the End-of-Year Financial Report filed with the Department. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report is intended solely for the information and use of the specified parties listed above and is not intended to be and should not be used by anyone other than those specified parties.



Certified Public Accountant

June 28, 2021

SPECIFIC COMPLIANCE REQUIREMENTS

Schedule 1 - Revenue & Expenditure Summary

I. Revenues

A. Revenue from Local Sources

1. Trace Revenues from Local Sources reported on Schedule 1 to the municipal and district accounting ledgers. Also, trace the revenues reported on district's accounting ledgers to revenues reported on Schedule 1. These amounts should agree.

C, D, and E. Revenues from Federal Grants, State Grants and Revolving & Special Funds

2. Trace the revenue from state aid, federal grants, state grants, and revolving and special funds to the detail in District's accounting ledgers. Also, trace the revenues reported on District's accounting ledgers to revenues reported on Schedule 1. These amounts should agree, with the possible exception of revenue from state aid, federal grants and state grants, which are entered by the State based on allotments. *Determine if the district verified the grant amounts received with the detail posted on the DESE website and pre-populated by DESE.*

Note: Amounts deposited in legally authorized revolving accounts (e.g., School Choice) cannot be transferred to the General Fund.

II. Expenditures

A. By School Committee and B. By City or Town

3. Trace the amounts reported for general fund education expenditures from Schedule 1, line 1850 to the municipal accounting ledgers and to the district accounting ledgers. Also trace the expenditures reported on district's accounting ledgers to expenditures reported on Schedule 1. These amounts should agree. If a crosswalk exists between the accounting ledgers and the EOYR, verify that the crosswalk agrees with the accounting ledgers in total and trace a sample of expenditures from the crosswalk to the accounting ledger.
4. Trace the amounts reported for a sample of DESE functions (i.e., teachers, principals), object codes (i.e., professional salaries (01), other salaries (02), and other expenditures (04-06) and DESE programs (i.e., regular day, special education, etc.) in Schedule 1 to the detail in the accounting ledgers or to the crosswalk, if applicable. These amounts should agree.

SPECIFIC COMPLIANCE REQUIREMENTS

5. Test Extraordinary Maintenance (4300) expenditures for the following: Verify that expenditures do not include salaries; verify that the expenditures include applicable principal portions of a loan or the cost of a lease/purchase agreement; and verify that expenditures classified as Extraordinary Maintenance (4300) do not exceed the per project per school dollar limit for extraordinary maintenance of \$150,000. Trace the expenditures to the detail in the accounting ledgers.
6. Determine how expenditures for fringe benefits are assigned or allocated to Schedule 1 Employee Benefits, Insurance (5100, 5200).
 - a. Trace the reported cost to the detail in the accounting ledgers using the methodology indicated. These amounts should agree.
 - b. Determine if expenses are charged to 5150 Employee Separation Costs. If no expenses are charged, inquire if any District employees retired in FY'20. In the event District employees retired, there should be costs/expenses reported.
 - c. Determine if the district reported Insurance for Retired Employees (5260) separately and appropriately.
7. If amounts are reported for Rental Lease of Equipment or Buildings determine if the required rental lease schedule is maintained locally.
8. Verify that expenditures charged to lines 1683 or 2060, Short-term Interest RAN's (5400) relate exclusively to Revenue Anticipation Notes (RAN's).
9. Verify that expenditures charged to line 1684 or 2065, Short-term Interest - BAN's (5450) relate exclusively to Bond Anticipation Notes (BAN's).
10. Identify expenditures reported as long-term School Construction debt for principal (8100) and interest (8200). Verify that BAN's are not included in these functions. Trace the reported costs to the Treasurer's debt schedule. Trace the reported amount to the detail in the accounting ledgers. These amounts should agree. *Note:* If the district received a lump sum wait list or progress payment from the Massachusetts School Building Authority, verify that the revenue was reported on line 130 and that expenses were reported for paydown of principal (8100), or Purchase of Land and Buildings (7100,7200) if applicable.

SPECIFIC COMPLIANCE REQUIREMENTS

11. Trace the expenditures for tuition payments to other public school districts in state (9100), to out of state schools (9200), to non-public schools (9300), to member collaboratives (9400), and assessments to member regional school districts (9500) to the detail in the accounting ledgers. These amounts should agree. *Note:* If the district prepaid FY'21 special education tuition, verify that prepaid tuition was not included as an FY'20 expense. If the District prepaid FY'20 tuition from FY'19, that amount should be included as an FY'20 expense.
12. For municipal expenditures that result in services directly related to the school committee:
 - a. Obtain a copy of a written agreement between the School Committee and Municipal officials documenting agreed upon methodologies to be used when allocating, distributing, or assigning Municipal expenditures to the District.
 - b. Test the amounts reported using the documented methodology. These amounts should agree.
13. Expenditures from Federal Grants, State Grants and Special Funds
 - a. Trace amounts claimed as Circuit Breaker expenses on line 3080 Column 7 to the Accounting ledgers or journals.
 - b. Determine if the District charged a restricted indirect rate to grants and indicate so in the report (including the rate charged).

Schedule 3

14. For Schedule 3 expenditures:
 - a. Verify that the District's accounting system includes School location codes and trace the amounts reported by school location on the linked file to the accounting ledgers. These amounts should agree.
 - b. If staff is assigned to more than one school, determine if the District maintains a payroll system or spreadsheet to document the assignment of staff salaries by school location.
 - c. If allocations are used to assign staff salaries to schools, programs, functions, or objects, was the allocation supported by a documented methodology?

SPECIFIC COMPLIANCE REQUIREMENTS

- d. If allocations are used for non-salary expenditures, determine if the District maintains a documented methodology for consistency in application. Allocations are acceptable on Schedule 3 for non-salary expenditures although direct assignment or charging is preferable.
- e. Ensure amounts reported as Districtwide cannot be assigned to specific school.

Schedule 4

- 15. Ascertain the methodology used to allocate, distribute, or assign special education costs to the placement categories on Schedule 4 and review the propriety of the methodology. Test the amounts reported on Schedule 4 using this methodology. These amounts should agree.

Schedule 7

In the event that a Municipal District does not have complete ridership data for Regular Day expenditures, please just note the inconsistency. That inconsistency should not be considered a finding.

- 16. Trace the transportation expenditures reported on Schedule 7 to the transportation expenditures reported on Schedule 1. These amounts should agree. Determine the methodology used to allocate transportation expenditures on Schedule 7 and verify the accuracy of the allocations. Also, if applicable, verify that reimbursable expenditures have been reduced by transportation revenue received from students transported.
- 17. Determine if there is adequate detail to support amounts reported (expenses and riders) for special education pupils transported outside the District.
- 18. Trace riders reported on Schedule 7 to the detailed transportation records and verify that the amounts reported on Schedule 7 are accurate and consistent with the detailed records.

SPECIFIC COMPLIANCE REQUIREMENTS

19. Determine if the District's accounting system separates costs in order to facilitate reported as outline in Schedule 7, including in-or-out of District, pre-school, non-public, school choice, charter school).
 - l. Determine if reimbursable expenditures claimed on line 4283 Homeless to Outside the District and line 4285 Homeless from Outside the District are supported by adequate documentation.
 - m. Verify that foster care transportation was *not* claimed as homeless and is reported appropriately on line 4286.

If a cost allocation plan was used to determine reimbursable expenditures, review the propriety of the plan, and test the expenditures reported.

Schedule 19

20. Determine if the School District has reported all changes to Schedule 19 Part A.1 - Appropriation by School Committee to the department. Compare the final School Committee Appropriation to Schedule 19 Part A.1 as filed/amended to determine if all changes were reported.
21. Determine amounts budgeted in Schedule 19 Part A.2 are consistent with methodologies outlined in the agreement noted in procedure II A. 4 a. above.
22. Determine that retiree health insurance (5250) is reported separately.

FINDINGS AND RECOMMENDATIONS

- 1. Finding:** Schedule 1 – requirement 2 – In our review of Schedule 1 School Department Revenue for State Aid, Federal Grants, State Grants, and Revolving and Special funds to the detail in the School and the Municipality’s accounting ledger, we noted that the amount reported as Other State Grants Revenue (line 590) column 5 (undistributed) was understated by \$50,000. Thus, the amount reported on line 590 column 5 (undistributed) should have been \$85,000 not \$35,000 as reported.

Criteria: The amounts reported as State Grants in Schedule 1 should agree with the detail in the School Department and the Municipality’s accounting ledgers.

Recommendation: We recommend that the Hopedale School Department report all State Grant as recorded in the School and the Municipality’s accounting ledger to the Revenue section of the End of Year Financial Report.

Response: An amendment has been filed on the FY20 EOYR to make the correction. Going forward the School will report grant revenue in the fiscal year it was received regardless of when it was expensed.

- 2. Finding:** Schedule 1 – requirement 3 – In our review of the crosswalk between Schedule 1 School Committee total expenditures (line 1850) to the detail in the School Department’s accounting ledger and the Municipality’s accounting ledger, we noted that the amount reported per schedule 1 for total expenditures by the School Committee was higher than the Municipality’s accounting ledgers by \$219.49.

Criteria: All School related expenditures incurred by the School Department should be properly reported in the School Committee section of Schedule 1. The amounts should also agree with the Schools and Municipality’s total School Department expenditures.

Recommendation: We recommend that the Hopedale School Department report and reconcile all education expenditures as recorded in the School Department’s and Municipality’s accounting ledgers in the proper fiscal years on the End of Year Financial Report.

Response: All reconciliations were completed by the School before submitting the EOYR to DESE. The Town did not close their books until after this date and may have made an adjustment to the School. The School and town will work together to prevent this from happening in the future.

FINDINGS AND RECOMMENDATIONS

3. **Finding:** Schedule 1 – requirement 9 – In our review of the Municipal expenditures for Short Term Interest BANS on line 2065 column 5 (undistributed), we noted that the amount reported as BAN interest was overstated by \$50,005. Thus line 2065 column 5 should have been \$5,625, not \$55,630 as reported.

Criteria: The amount to be reported for Short Term Interest BANS should agree to the amount recorded in the Municipality’s accounting ledgers.

Recommendation: We recommend that the Municipality report all Short Term Interest BANS as recorded in the Municipality’s accounting ledgers on Schedule 1.

Response: An amendment has been filed on the FY20 EOYR to make the correction.

4. **Finding:** Schedule 1 – requirement 10 – In our review of Municipal expenditures reported as Long-Term Debt Retire/School Construction (8100) and Long Term Debt Service/School Construction (8200) we noted the following:

- Long-Term Debt Retire/School Construction (8100) was understated by \$10,000. Thus line 2130 column 5 (undistributed) should have been \$784,211 not \$774,211 as reported.
- Long Term Debt Service/School Construction (8200) was understated by \$3,217. Thus line 2140 column 5 (undistributed) should have been \$14,831 not \$11,614 as reported.

Criteria: The amount reported as long-term School Construction debt for principal and interest should be traceable to the Municipality’s accounting ledgers and the Treasurer’s Statement of Indebtedness.

Recommendation: We recommend that the Municipality report all Long Term Debt Principal and Interest paid during FY’20 as recorded in the Municipality’s accounting ledgers and the Treasurer’s Statement of Indebtedness.

Response: An amendment has been filed on the FY20 EOYR to make the correction.

FINDINGS AND RECOMMENDATIONS

5. **Finding:** Schedule 1 – requirement 15 – In our review of Schedule 4 Special Education expenditures by Placement as compared to the detail in the School Department’s accounting ledgers, we noted the following:

- Teaching (2300) line 3820 column 9 (total) on Schedule 4 was overstated by \$28,187. Thus line 3820 column 9 (total) on Schedule 4 should have been \$2,781,498 not \$2,809,685 as reported.
- Exp From Grants, Revolving Funds line 3930 column 9 total was understated by \$28,187. Thus line 3930 column 9 (total) on Schedule 4 should have been \$320,795 not \$292,608 as reported.

Due to the finding noted above for the Teaching (2300) and Exp from Grants, Revolving Funds total cost lines 3820 and 3930 respectively, the allocations to the various placements on Schedule 4 per the methodology must be adjusted:

- Line 3820 column 1 (3-5 Yr. Olds all placements (doe032-30-48)) was overstated by \$1,196. Thus line 3820 column 1 should have been \$117,991 not \$119,187 as reported.
- Line 3820 column 2 (Age 6-21 Public School Programs (doe034-10, 20, & 40)) was overstated by \$17,254. Thus line 3820 column 2 should have been \$1,702,694 not \$1,719,948 as reported.
- Line 3820 column 3 (Age 6-21 Public Separate Day School (doe034-41)) was overstated by \$683. Thus line 3820 column 3 should have been \$67,368 not \$68,051 as reported.
- Line 3820 column 4 (Age 6-21 Private Separate Day School (doe034-50)) was overstated by \$513. Thus line 3820 column 4 should have been \$50,623 not \$51,136 as reported.
- Line 3820 column 5 (Age 6-21 Private Residential School (doe034-60)) was overstated by \$85. Thus line 3820 column 5 should have been \$8,372 not \$8,457 as reported.
- Line 3820 column 8 (Screening and Team Evaluation) was overstated by \$8,456. Thus line 3820 column 8 should have been \$834,450 not \$842,906 as reported.
- Line 3920 column 1 (3-5 Yr. Olds all placements (doe032-30-48)) was understated by \$437. Thus line 3920 column 1 should have been \$12,512 not \$12,075 as reported.

FINDINGS AND RECOMMENDATIONS

- Line 3920 column 4 (Age 6-21 Private Separate Day School (doe034-50)) was understated by \$27,750. Thus line 3920 column 4 should have been \$227,955 not \$200,205 as reported

Criteria: All amounts on Schedule 4 should agree with the School Department's detailed accounting ledgers and the School Committee expenditures reported on Schedule 1 of the End of Year Report.

Recommendation: We recommend that the Hopedale School Department report all special education expenditures per the documented methodology and the School Department's accounting ledgers.

Response: An amendment has been filed on the FY20 EOYR to make the correction. Going forward the School will report all information on the correct line.

TOWN OF HOPEDALE, MASSACHUSETTS

**REPORT ON EXAMINATION OF
BASIC FINANCIAL STATEMENTS**

JUNE 30, 2020

**TOWN OF HOPEDALE, MASSACHUSETTS
 REPORT ON EXAMINATION OF
 BASIC FINANCIAL STATEMENTS
 JUNE 30, 2020**

TABLE OF CONTENTS

	<u>PAGE</u>
Independent Auditor’s Report	1 - 2
Management’s Discussion and Analysis	3 – 8
Basic Financial Statements	
Statement of Net Position	9
Statement of Activities	10 – 11
Governmental Funds – Balance Sheet	12
Governmental Funds – Statement of Revenues, Expenditures, and Changes in Fund Balances	13
Reconciliation of the Governmental Funds Balance Sheet Total Fund Balances to the Statement of Net Position	14
Reconciliation of the Statement of Revenues, Expenditures, and Changes in Fund Balances of Governmental Funds to the Statement of Activities	15
General Fund – Statement of Revenues, Expenditures, and Changes in Fund Balance – Budget and Actual	16
Proprietary Funds - Statement of Net Position	17
Proprietary Funds – Statement of Revenues, Expenses, and Changes in Net Position	18
Proprietary Funds – Statement of Cash Flows	19
Fiduciary Fund – Statement of Fiduciary Net Position	20
Notes to Basic Financial Statements	21 – 67
Required Supplementary Information:	
Worcester Regional Retirement System Schedules:	
Schedule of Town’s Proportionate Share of the Net Pension Liability	68
Schedule of Town’s Contribution	69

**TOWN OF HOPEDALE, MASSACHUSETTS
REPORT ON EXAMINATION OF
BASIC FINANCIAL STATEMENTS
JUNE 30, 2020**

TABLE OF CONTENTS	<u>PAGE</u>
Massachusetts Teachers Retirement System Schedule:	
Schedule of the Commonwealth's Collective amounts of the Net Pension Liability	70
Other Postemployment Benefit Plan Schedules:	
Schedule of the Town's Net OPEB Liability and Related Ratios	71
Schedule of the Town's Contribution	72
Notes to Required Supplementary Information	73

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INDEPENDENT AUDITOR'S REPORT

To the Honorable Board of Selectmen
Town of Hopedale, Massachusetts

We have audited the accompanying financial statements of the governmental activities, the business-type activities, each major fund, and the aggregate remaining fund information of the Town of Hopedale, Massachusetts, as of and for the year ended June 30, 2020, and the related notes to the financial statements, which collectively comprise the Town's basic financial statements as listed in the table of contents.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditor's Responsibility

Our responsibility is to express opinions on these financial statements based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinions.

Opinions

In our opinion, the financial statements referred to above present fairly, in all material respects, the respective financial position of the governmental activities, the business-type activities, each major fund, and the aggregate remaining fund information of the Town of Hopedale, Massachusetts, as of June 30, 2020, and the respective changes in financial position and, where applicable, cash flows thereof and the respective budgetary comparison for the general fund for the year then ended in accordance with accounting principles generally accepted in the United States of America.

Other Matters

Required Supplementary Information

Accounting principles generally accepted in the United States of America require that the management's discussion and analysis, and Worcester Regional Retirement System schedules - Town's proportionate share of the net pension liability, and Town's contribution, Massachusetts Teachers Retirement System's schedule of the Commonwealth's Collective amounts of the Net Pension Liability, Other Post-Employment Benefit schedules - Town's Net OPEB Liability and Related Ratios, and Town's contribution, and notes to required supplementary information on pages 3 – 8, 68 – 69, 70, 71 – 72 and 73 be presented to supplement the basic financial statements. Such information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board, who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.



Certified Public Accountant

August 26, 2021

Management's Discussion and Analysis

As management of the Town of Hopedale (the "Town"), we offer readers of these basic financial statements this narrative overview and analysis of the financial activities for the fiscal year ended June 30, 2020. The financial statements have been prepared under the Governmental Accounting Standards Board Statement Number 34 – Basic Financial Statements and Management's Discussion and Analysis for State and Local Governments. We encourage readers to consider the information presented in this report.

Overview of the Financial Statements

This discussion and analysis is intended to serve as an introduction to the Town's basic financial statements. These basic financial statements comprise of three components:

1. Government-Wide Financial Statements
2. Fund Financial Statements
3. Notes to the Basic Financial Statements

Government-Wide Financial Statements – The government-wide financial statements are designed to provide readers with a broad overview of finances, in a manner similar to private-sector business.

The *statement of net position* presents information on all assets and liabilities, with the difference between the two reported as net position. Over time, increases or decreases in net position may serve as a useful indicator of whether the financial position is improving or deteriorating.

The *statement of activities* presents information showing how the government's net position changed during the most recent fiscal year. All changes in net position are reported as soon as the underlying event giving rise to the change occurs, *regardless of the timing of related cash flows*. Thus, revenues and expenses are reported in this statement for some items that will only result in cash flows in future periods, (e.g., uncollected taxes and earned but unused vacation/sick leave).

Both of the government-wide financial statements distinguish functions that are principally supported by taxes and intergovernmental revenues (*governmental activities*) from other functions that are intended to recover all or a significant portion of their costs through user fees or charges (*business-type activities*). The governmental activities include general government, public safety, education, public works, human services, culture and recreation, employee benefits, interest and state and county charges. The business type activities include costs relating to water and sewer activities.

Fund Financial Statements – A fund is a grouping of related accounts that is used to maintain control over resources that have been segregated for specific activities or objectives. Fund accounting is used to ensure and demonstrate compliance with finance-related legal requirements. All of the funds can be divided into three categories: governmental funds, proprietary funds and fiduciary fund.

Governmental Funds – Governmental funds are used to account for essentially the same functions reported as *governmental activities* in the government-wide financial statements. However, unlike the government-wide financial statements, governmental funds financial statements focus on *near-term inflows and outflows of spendable resources*, as well as on *balances of spendable resources* available at the end of the fiscal year. Such information may be useful in evaluating a government's near-term financing requirements.

Because the focus of governmental funds is narrower than that of the government-wide financial statements, it is useful to compare the information presented for *governmental funds* with similar information presented for *governmental activities* in the government-wide financial statements. By doing so, readers may better understand the long-term impact of the government's near-term financing decisions. Both the governmental funds balance sheet and the governmental funds statement of revenues, expenditures and changes in fund balances provide a reconciliation to facilitate this comparison between *governmental funds* and *governmental activities*.

The Town of Hopedale adopts an annual appropriated budget for its general fund. A budgetary comparison statement has been provided for the general fund to demonstrate compliance with this budget.

Proprietary Funds – *Enterprise funds* are used to report the same functions presented as business-type activities in the government-wide financial statements. The Town has two enterprise funds:

- *Water Enterprise Fund* accounts for the water activity of the Town.
- *Sewer Enterprise Fund* accounts for the sewer activity of the Town.

Fiduciary Funds – Fiduciary funds are used to account for resources held for the benefit of parties outside the government. Fiduciary funds are not reflected in the government-wide financial statement because the resources of those funds are **not** available to support the Town's own programs. The accounting used for fiduciary funds is much like that used for proprietary funds.

Notes to the basic financial statements – The notes provide additional information that is essential to a full understanding of the data provided in the government-wide and fund financial statements.

Government-wide Financial Analysis:

The tables on the following pages summarize key financial components of the Town's financial statements.

As noted earlier, net position may serve over time as a useful indicator of a government's financial position. Liabilities exceed assets by \$17,382,659 at the close of fiscal year 2020.

The largest component of the Town's net position is its *investment in capital assets* (e.g., land, buildings, machinery, and equipment, less any related outstanding debt used to acquire those assets), is \$34,149,887 or 197% of total net position. The Town uses these capital assets to provide services to citizens; consequently, these assets **are not** available for future spending. Although the investment in its capital assets is reported net of its related debt, it should be noted that the resources needed to repay this debt must be provided from other sources, since the capital assets themselves cannot be used to liquidate these liabilities.

An additional portion of the restricted net position totaling \$3,352,238 or 19% represents resources that are subject to external restrictions on how they may be used. The remaining balance of *unrestricted net position* totals a negative balance of \$(54,884,784) or (316)%.

Comparative Net Position

	Governmental		Business-type		Total	
	Activities		Activities		Primary	
	FY 2020	FY 2019	FY 2020	FY 2019	FY 2020	FY 2019
Assets:						
Current assets	\$ 8,652,177	\$ 8,297,107	\$ 1,663,290	\$ 587,672	\$ 10,315,467	\$ 8,884,779
Noncurrent assets (excluding capital)	-	-	32,206	47,750	32,206	47,750
Capital assets	<u>27,791,724</u>	<u>27,960,743</u>	<u>17,740,751</u>	<u>17,923,157</u>	<u>45,532,475</u>	<u>45,883,900</u>
Total assets	<u>36,443,901</u>	<u>36,257,850</u>	<u>19,436,247</u>	<u>18,558,579</u>	<u>55,880,148</u>	<u>54,816,429</u>
Deferred Outflows of Resources:	<u>5,205,667</u>	<u>6,898,247</u>	<u>137,291</u>	<u>179,572</u>	<u>5,342,958</u>	<u>7,077,819</u>
Liabilities:						
Current liabilities (excluding debt)	1,830,329	1,651,272	261,149	636,645	2,091,478	2,287,917
Noncurrent liabilities (excluding debt)	59,452,239	58,096,150	1,670,392	1,608,853	61,122,631	59,705,003
Current debt	839,037	3,890,806	570,917	4,452,030	1,409,954	8,342,836
Noncurrent debt	<u>2,691,918</u>	<u>499,144</u>	<u>9,036,884</u>	<u>4,270,483</u>	<u>11,728,802</u>	<u>4,769,627</u>
Total liabilities	<u>64,813,523</u>	<u>64,137,372</u>	<u>11,539,342</u>	<u>10,968,011</u>	<u>76,352,865</u>	<u>75,105,383</u>
Deferred Inflows of Resources:	<u>2,105,371</u>	<u>2,149,556</u>	<u>147,529</u>	<u>55,694</u>	<u>2,252,900</u>	<u>2,205,250</u>
Net Position:						
Net Investment in capital assets	25,044,502	23,570,793	9,105,385	9,200,644	34,149,887	32,771,437
Restricted	3,352,238	1,031,684	-	-	3,352,238	1,031,684
Unrestricted	<u>(53,666,066)</u>	<u>(47,733,308)</u>	<u>(1,218,718)</u>	<u>(1,486,198)</u>	<u>(54,884,784)</u>	<u>(49,219,506)</u>
Total net position	<u>\$ (25,269,326)</u>	<u>\$ (23,130,831)</u>	<u>\$ 7,886,667</u>	<u>\$ 7,714,446</u>	<u>\$ (17,382,659)</u>	<u>\$ (15,416,385)</u>

At the end of the current fiscal year, the Town is able to report positive balances in almost all categories of net position for the government as a whole.

The governmental activities net position decreased by \$2,138,495. \$1.8 million of the decrease is attributable to the increase in the OPEB liability. In addition, the results of general fund operations utilized a drawing down of prior year reserves to balance current operations.

There was an increase of \$172,221 in net position reported in connection with the water and sewer business-type activities.

Comparative Changes in Net Position

	Governmental Activities		Business-type Activities		Total Primary Government	
	FY 2020	FY 2019	FY 2020	FY 2019	FY 2020	FY 2019
Revenues						
<i>Program Revenues:</i>						
Charges for services	\$ 1,468,168	\$ 1,929,073	\$ 2,689,136	\$ 2,188,167	\$ 4,157,304	\$ 4,117,240
Operating grants and contributions	12,511,291	10,897,537	3,085	4,326	12,514,376	10,901,863
Capital grants and contributions	1,013,811	694,776	4,465	-	1,018,276	694,776
<i>General Revenues:</i>						
Real Estate and personal property taxes	15,309,229	13,809,741	-	-	15,309,229	13,809,741
Tax Liens	224,229	170,811	-	-	224,229	170,811
Motor vehicle excise taxes	896,734	900,134	-	-	896,734	900,134
Penalties and interest on taxes	161,886	198,710	-	-	161,886	198,710
Payments in lieu of taxes	56,769	54,874	-	-	56,769	54,874
Nonrestricted grants and contributions	786,809	789,173	-	-	786,809	789,173
Unrestricted investment income	55,617	89,557	-	-	55,617	89,557
Other revenues	77,727	18,624	-	-	77,727	18,624
Total Revenues	32,562,270	29,553,010	2,696,686	2,192,493	35,258,956	31,745,503
Expenses:						
General Government	1,110,376	1,071,248	-	-	1,110,376	1,071,248
Public Safety	3,126,095	3,201,903	-	-	3,126,095	3,201,903
Education	16,765,605	16,502,466	-	-	16,765,605	16,502,466
Public Works	1,197,845	1,225,733	-	-	1,197,845	1,225,733
Human Services	730,841	711,843	-	-	730,841	711,843
Culture and Recreation	471,411	403,342	-	-	471,411	403,342
Employee Benefits	10,875,207	7,757,103	-	-	10,875,207	7,757,103
State and County Assessments	515,447	407,440	-	-	515,447	407,440
Interest	125,582	73,287	-	-	125,582	73,287
Water	-	-	1,156,887	1,125,506	1,156,887	1,125,506
Sewer	-	-	1,149,934	966,564	1,149,934	966,564
Total Expenses	34,918,409	31,354,365	2,306,821	2,092,070	37,225,230	33,446,435
Increase (decrease) in net position before transfers	(2,356,139)	(1,801,355)	389,865	100,423	(1,966,274)	(1,700,932)
Transfers	217,644	-	(217,644)	-	-	-
Prior Period Adjustment - OPEB	-	(6,718,523)	-	(161,614)	-	(6,880,137)
Change in Net Position	(2,138,495)	(8,519,878)	172,221	(61,191)	(1,966,274)	(8,581,069)
Net Position - beginning	(23,130,831)	(14,610,953)	7,714,446	7,775,637	(15,416,385)	(6,835,316)
Net Position - ending	\$ (25,269,326)	\$ (23,130,831)	\$ 7,886,667	\$ 7,714,446	\$ (17,382,659)	\$ (15,416,385)

Financial analysis of the Government's Funds

As noted earlier, the Town uses fund accounting to ensure and demonstrate compliance with finance-related legal requirements.

Governmental funds – The focus of *governmental funds* is to provide information on near-term inflows, outflows, and balances of *spendable* resources. Such information is useful in assessing financing requirements. In particular, *unassigned fund balance* may serve as a useful measure of a government's net resources available for spending at the end of the fiscal year.

As of the end of the current fiscal year, governmental funds reported combined ending fund balances of \$5,324,728 which represents an increase of \$2,247,674 in comparison with the prior year. The increase is attributable to the positive results in the general fund and positive results in town road construction and nonmajor governmental funds.

The general fund is the chief operating fund. At the end of the current fiscal year, unassigned fund balance of the general fund was \$2,005,492 while total fund balance reached \$2,866,648. As a measure of the general fund's liquidity, it may be useful to compare both unassigned fund balance and total fund balance to total fund expenditures. Unassigned fund balance 7% of total general fund expenditures, while total fund balance represents 10% of that same amount.

The fund balance of the general fund has increased by \$364,830. This result is attributed to revenue coming in over budget.

General Fund Budget Highlights

There were no changes between the original and final budgeted revenues of the Town. Overall, the Town's general fund revenue was \$287,867 greater than budgeted. Overall, actual Town general fund expenditures were \$777,097 less than budgeted.

Capital Asset and Debt Administration

In conjunction with the operating budget, the Town annually prepares capital budgets for the upcoming fiscal year.

The Town's investment in capital assets for governmental and business-type activities, as summarized below, as of June 30, 2020, amounts to \$45,532,475 net of accumulated depreciation. The investment in capital assets includes land, buildings, furniture and fixtures, vehicles, infrastructure, and construction in progress.

The governmental activities capital assets (net of accumulated depreciation) decreased by \$169,019 during the current fiscal year, while the business-type activities capital assets (net of accumulated depreciation) increased by \$69,048 resulting in a total government-wide decrease to capital assets (net of accumulated depreciation) of \$99,971.

**Capital Assets
(Net of Depreciation)**

	Governmental Activities		Business-type Activities		Total Primary Government	
	FY 2020	FY 2019	FY 2020	FY 2019	FY 2020	FY 2019
Land	\$ 3,986,749	\$ 3,986,749	\$ 406,161	\$ 406,161	\$ 4,392,910	\$ 4,392,910
Buildings	13,632,056	14,317,797	-	-	13,632,056	14,317,797
Furniture and Fixtures	388,540	454,881	192,279	205,507	580,819	660,388
Vehicles	1,179,260	857,075	64,394	80,383	1,243,654	937,458
Infrastructure	8,572,908	8,249,688	11,586,331	12,082,674	20,159,239	20,332,362
Construction in Progress	32,211	94,553	5,491,586	5,148,432	5,523,797	5,242,985
Total Capital Assets	\$ 27,791,724	\$ 27,960,743	\$ 17,740,751	\$ 17,923,157	\$ 45,532,475	\$ 45,883,900

The Town's debt burden is reasonable in relation to other communities its size. Outstanding governmental activities long-term debt, as of June 30, 2020, totaled \$2,829,144. The governmental activities' debt consists of the following:

Education	\$ 2,450,000
Public Safety	250,000
Public Works	129,144

The water enterprise fund has \$3,505,483 in debt and the sewer enterprise fund has \$6,102,318 in debt that is fully supported by the respective utility rates and does not rely on a general fund subsidy.

Please refer to **Notes 5 and 9** for further discussion of the major capital and debt activity.

Economic Factors and Next Year's Budget and Rates

- New property growth was \$189,588 in FY 2021.
- Town meeting authorized to borrow \$1,482,693 in FY2021.

Request for Information

This financial report is designed to provide a general overview of the Town of Hopedale's finances for all those with an interest in the government's finances. Questions concerning any of the information provided in this report or request for additional financial information should be addressed to the Town Accountant, Town of Hopedale, P.O. Box 7, Hopedale, MA. 01747.

**TOWN OF HOPEDALE, MASSACHUSETTS
STATEMENT OF NET POSITION
JUNE 30, 2020**

	PRIMARY GOVERNMENT		
	GOVERNMENTAL ACTIVITIES	BUSINESS-TYPE ACTIVITIES	TOTAL
<u>ASSETS</u>			
CURRENT:			
CASH AND SHORT-TERM INVESTMENTS	\$ 5,529,566	\$ 624,488	\$ 6,154,054
INVESTMENTS	1,703,428	-	1,703,428
RECEIVABLES, NET OF ALLOWANCE FOR UNCOLLECTIBLES:			
REAL ESTATE AND PERSONAL PROPERTY TAXES	319,439	-	319,439
TAX LIENS	731,914	-	731,914
MOTOR VEHICLE EXCISE TAXES	88,810	-	88,810
USER FEES	-	490,842	490,842
DEPARTMENTAL AND OTHER	114,924	-	114,924
INTERGOVERNMENTAL	128,598	547,960	676,558
DUE FROM OTHER FUNDS	35,498	-	35,498
NONCURRENT:			
RECEIVABLES, NET OF ALLOWANCE FOR UNCOLLECTIBLES:			
INTERGOVERNMENTAL	-	32,206	32,206
CAPITAL ASSETS, NET OF ACCUMULATED DEPRECIATION	27,791,724	17,740,751	45,532,475
TOTAL ASSETS	36,443,901	19,436,247	55,880,148
DEFERRED OUTFLOWS OF RESOURCES			
RELATED TO PENSIONS	1,182,007	36,556	1,218,563
RELATED TO POSTEMPLOYMENT BENEFITS	4,023,660	100,735	4,124,395
TOTAL DEFERRED OUTFLOWS OF RESOURCES	5,205,667	137,291	5,342,958
<u>LIABILITIES</u>			
CURRENT:			
ACCOUNTS PAYABLE	1,672,456	178,045	1,850,501
ACCRUED INTEREST	19,899	58,686	78,585
OTHER LIABILITIES	41,150	-	41,150
CAPITAL LEASE OBLIGATIONS	45,110	-	45,110
COMPENSATED ABSENCES	51,714	24,418	76,132
BONDS AND NOTES PAYABLE	839,037	570,917	1,409,954
NONCURRENT:			
CAPITAL LEASE OBLIGATIONS	47,635	-	47,635
COMPENSATED ABSENCES	725,362	118,790	844,152
POSTEMPLOYMENT BENEFITS	44,672,854	1,118,414	45,791,268
NET PENSION LIABILITY	14,006,388	433,188	14,439,576
BONDS AND NOTES PAYABLE	2,691,918	9,036,884	11,728,802
TOTAL LIABILITIES	64,813,523	11,539,342	76,352,865
DEFERRED INFLOWS OF RESOURCES			
DEFERRED AMOUNT ON REFUNDING	-	90,000	90,000
RELATED TO PENSIONS	818,129	25,302	843,431
RELATED TO POSTEMPLOYMENT BENEFITS	1,287,242	32,227	1,319,469
TOTAL DEFERRED INFLOWS OF RESOURCES	2,105,371	147,529	2,252,900
<u>NET POSITION</u>			
NET INVESTMENT IN CAPITAL ASSETS	25,044,502	9,105,385	34,149,887
RESTRICTED FOR:			
PERMANENT FUNDS:			
EXPENDABLE	22,741	-	22,741
NONEXPENDABLE	57,763	-	57,763
OTHER PURPOSES	3,271,734	-	3,271,734
UNRESTRICTED	(53,666,066)	(1,218,718)	(54,884,784)
TOTAL NET POSITION	\$ (25,269,326)	\$ 7,886,667	\$ (17,382,659)

See accompanying notes to the basic financial statements

**TOWN OF HOPEDALE, MASSACHUSETTS
STATEMENT OF ACTIVITIES
FISCAL YEAR ENDED JUNE 30, 2020**

FUNCTIONS/PROGRAMS	EXPENSES	PROGRAM REVENUES			NET (EXPENSE) REVENUE
		CHARGES FOR SERVICES	OPERATING GRANTS AND CONTRIBUTIONS	CAPITAL GRANTS AND CONTRIBUTIONS	
PRIMARY GOVERNMENT:					
GOVERNMENTAL ACTIVITIES:					
GENERAL GOVERNMENT	\$ 1,110,376	\$ 59,747	\$ 54,052	\$ -	\$ (996,577)
PUBLIC SAFETY	3,126,095	484,054	477,252	-	(2,164,789)
EDUCATION	16,765,605	888,977	8,221,078	772,236	(6,883,314)
PUBLIC WORKS	1,197,845	6,625	-	241,575	(949,645)
HUMAN SERVICES	730,841	14,247	56,302	-	(660,292)
CULTURE & RECREATION	471,411	14,518	42,363	-	(414,530)
EMPLOYEE BENEFITS	10,875,207	-	3,660,244	-	(7,214,963)
STATE & COUNTY ASSESSMENTS	515,447	-	-	-	(515,447)
INTEREST	125,582	-	-	-	(125,582)
TOTAL GOVERNMENTAL ACTIVITIES	34,918,409	1,468,168	12,511,291	1,013,811	(19,925,139)
BUSINESS-TYPE ACTIVITIES:					
WATER	1,156,887	1,265,245	1,543	4,465	114,366
SEWER	1,149,934	1,423,891	1,542	-	275,499
TOTAL BUSINESS-TYPE ACTIVITIES	2,306,821	2,689,136	3,085	4,465	389,865
TOTAL PRIMARY GOVERNMENT	\$ 37,225,230	\$ 4,157,304	\$ 12,514,376	\$ 1,018,276	\$ (19,535,274)

See accompanying notes to the basic financial statements

(continued)

**TOWN OF HOPEDALE, MASSACHUSETTS
STATEMENT OF ACTIVITIES
FISCAL YEAR ENDED JUNE 30, 2020**

	PRIMARY GOVERNMENT		
	GOVERNMENTAL ACTIVITIES	BUSINESS-TYPE ACTIVITIES	TOTAL
CHANGES IN NET POSITION:			
NET (EXPENSE) REVENUE FROM PREVIOUS PAGE	\$ (19,925,139)	\$ 389,865	\$ (19,535,274)
GENERAL REVENUES:			
REAL ESTATE AND PERSONAL PROPERTY TAXES, NET OF TAX REFUNDS PAYABLE	15,309,229	-	15,309,229
TAX LIENS	224,229	-	224,229
MOTOR VEHICLE EXCISE TAXES	896,734	-	896,734
PENALTIES AND INTEREST ON TAXES	161,886	-	161,886
PAYMENTS IN LIEU OF TAXES	56,769	-	56,769
GRANTS AND CONTRIBUTIONS NOT RESTRICTED TO SPECIFIC PROGRAMS	786,809	-	786,809
UNRESTRICTED INVESTMENT INCOME	55,617	-	55,617
MISCELLANEOUS	77,727	-	77,727
TRANSFERS, NET	217,644	(217,644)	-
TOTAL GENERAL REVENUES AND TRANSFERS	17,786,644	(217,644)	17,569,000
CHANGE IN NET POSITION	(2,138,495)	172,221	(1,966,274)
NET POSITION:			
BEGINNING OF YEAR	(23,130,831)	7,714,446	(15,416,385)
END OF YEAR	\$ (25,269,326)	\$ 7,886,667	\$ (17,382,659)

See accompanying notes to the basic financial statements

(concluded)

**TOWN OF HOPEDALE, MASSACHUSETTS
GOVERNMENTAL FUNDS
BALANCE SHEET
JUNE 30, 2020**

<u>ASSETS</u>	<u>GENERAL</u>	<u>NONMAJOR GOVERNMENTAL FUNDS</u>	<u>TOTAL GOVERNMENTAL FUNDS</u>
CASH AND SHORT-TERM INVESTMENTS	\$ 2,517,485	\$ 3,012,081	\$ 5,529,566
INVESTMENTS	1,622,924	80,504	1,703,428
RECEIVABLES, NET OF ALLOWANCE FOR UNCOLLECTIBLES:			
REAL ESTATE AND PERSONAL PROPERTY TAXES	319,439	-	319,439
TAX LIENS	731,914	-	731,914
MOTOR VEHICLE EXCISE TAXES	88,810	-	88,810
DEPARTMENTAL AND OTHER	-	114,924	114,924
INTERGOVERNMENTAL	-	128,598	128,598
DUE FROM OTHER FUNDS	35,498	-	35,498
TOTAL ASSETS	<u>\$ 5,316,070</u>	<u>\$ 3,336,107</u>	<u>\$ 8,652,177</u>
 <u>LIABILITIES, DEFERRED INFLOWS OF RESOURCES AND FUND BALANCES</u>			
LIABILITIES:			
ACCOUNTS PAYABLE	\$ 1,384,353	\$ 288,103	\$ 1,672,456
OTHER LIABILITIES	41,150	-	41,150
NOTES PAYABLE	-	475,000	475,000
TOTAL LIABILITIES	<u>1,425,503</u>	<u>763,103</u>	<u>2,188,606</u>
DEFERRED INFLOWS OF RESOURCES:			
UNAVAILABLE REVENUE	1,023,919	114,924	1,138,843
FUND BALANCES:			
NONSPENDABLE	-	57,763	57,763
RESTRICTED	-	2,799,624	2,799,624
COMMITTED	79,512	-	79,512
ASSIGNED	781,644	-	781,644
UNASSIGNED	2,005,492	(399,307)	1,606,185
TOTAL FUND BALANCES	<u>2,866,648</u>	<u>2,458,080</u>	<u>5,324,728</u>
TOTAL LIABILITIES, DEFERRED INFLOW OF RESOURCES AND FUND BALANCES	<u>\$ 5,316,070</u>	<u>\$ 3,336,107</u>	<u>\$ 8,652,177</u>

See accompanying notes to the basic financial statements

**TOWN OF HOPEDALE, MASSACHUSETTS
GOVERNMENTAL FUNDS
STATEMENT OF REVENUES, EXPENDITURES, AND CHANGES IN FUND BALANCES
FISCAL YEAR ENDED JUNE 30, 2020**

	<u>GENERAL</u>	<u>NONMAJOR GOVERNMENTAL FUNDS</u>	<u>TOTAL GOVERNMENTAL FUNDS</u>
<u>REVENUES:</u>			
REAL ESTATE AND PERSONAL PROPERTY TAXES, NET OF TAX REFUNDS	\$ 15,199,851	\$ -	\$ 15,199,851
MOTOR VEHICLE EXCISE TAXES	854,704	-	854,704
INTERGOVERNMENTAL	11,322,789	2,640,565	13,963,354
PAYMENTS IN LIEU OF TAXES	56,769	-	56,769
PENALTIES & INTEREST ON TAXES	161,886	-	161,886
CHARGES FOR SERVICES	-	1,301,468	1,301,468
INVESTMENT INCOME	55,616	1,677	57,293
CONTRIBUTIONS AND DONATIONS	-	84,031	84,031
DEPARTMENTAL AND OTHER	365,677	156,819	522,496
	<hr/>	<hr/>	<hr/>
TOTAL REVENUES	28,017,292	4,184,560	32,201,852
<u>EXPENDITURES:</u>			
CURRENT:			
GENERAL GOVERNMENT	1,086,603	11,036	1,097,639
PUBLIC SAFETY	2,841,454	204,628	3,046,082
EDUCATION	13,193,288	3,052,950	16,246,238
PUBLIC WORKS	709,703	1,018,281	1,727,984
HUMAN SERVICES	687,264	43,577	730,841
CULTURE & RECREATION	329,870	135,704	465,574
EMPLOYEE BENEFITS	7,842,565	-	7,842,565
STATE & COUNTY ASSESSMENTS	515,447	-	515,447
DEBT SERVICE			
PRINCIPAL	929,268	-	929,268
INTEREST	126,995	-	126,995
	<hr/>	<hr/>	<hr/>
TOTAL EXPENDITURES	28,262,457	4,466,176	32,728,633
EXCESS (DEFICIENCY) OF REVENUES OVER EXPENDITURES	<hr/> (245,165)	<hr/> (281,616)	<hr/> (526,781)
<u>OTHER FINANCING SOURCES (USES)</u>			
PROCEEDS FROM BONDS AND NOTES	-	2,330,000	2,330,000
PROCEEDS FROM BOND PREMIUM	8,735	268,793	277,528
BOND REFUNDING COSTS	-	(50,717)	(50,717)
OPERATING TRANSFERS IN	601,260	-	601,260
OPERATING TRANSFERS OUT	-	(383,616)	(383,616)
	<hr/>	<hr/>	<hr/>
TOTAL OTHER FINANCING SOURCES (USES)	609,995	2,164,460	2,774,455
NET CHANGE IN FUND BALANCES	364,830	1,882,844	2,247,674
FUND BALANCES AT BEGINNING OF YEAR	<hr/> 2,501,818	<hr/> 575,236	<hr/> 3,077,054
FUND BALANCES AT END OF YEAR	<hr/> \$ 2,866,648	<hr/> \$ 2,458,080	<hr/> \$ 5,324,728

See accompanying notes to the basic financial statements

**TOWN OF HOPEDALE, MASSACHUSETTS
RECONCILIATION OF THE GOVERNMENTAL FUNDS BALANCE SHEET
TOTAL FUND BALANCES TO THE STATEMENT OF NET POSITION
FISCAL YEAR ENDED JUNE 30, 2020**

TOTAL GOVERNMENTAL FUND BALANCES		\$ 5,324,728
CAPITAL ASSETS (NET) USED IN GOVERNMENTAL ACTIVITIES ARE NOT FINANCIAL RESOURCES AND, THEREFORE, ARE NOT REPORTED IN THE FUNDS		27,791,724
ACCOUNTS RECEIVABLE ARE NOT AVAILABLE TO PAY FOR CURRENT-PERIOD EXPENDITURES AND, THEREFORE, ARE DEFERRED IN THE FUNDS		1,138,843
IN THE STATEMENT OF ACTIVITIES, INTEREST IS ACCRUED ON OUTSTANDING LONG-TERM DEBT, WHEREAS IN GOVERNMENTAL FUNDS INTEREST IS NOT REPORTED UNTIL DUE		(19,899)
LONG-TERM LIABILITIES ARE NOT DUE AND PAYABLE IN THE CURRENT PERIOD AND, THEREFORE, ARE NOT REPORTED IN THE GOVERNMENTAL FUNDS		
BONDS AND NOTES PAYABLE	(2,829,144)	
UNAMORTIZED BOND PREMIUM	(226,811)	
NET NET PENSION LIABILITY	(14,006,388)	
DEFERRED OUTFLOWS OF RESOURCES - RELATED TO PENSIONS	1,182,007	
DEFERRED INFLOWS OF RESOURCES - RELATED TO PENSIONS	(818,129)	
CAPITAL LEASE OBLIGATIONS	(92,745)	
COMPENSATED ABSENCES	(777,076)	
POSTEMPLOYMENT BENEFITS	(44,672,854)	
DEFERRED OUTFLOWS OF RESOURCES - RELATED TO POSTEMPLOYMENT BENEFITS	4,023,660	
DEFERRED INFLOWS OF RESOURCES - RELATED TO POSTEMPLOYMENT BENEFITS	<u>(1,287,242)</u>	
NET EFFECT OF REPORTING LONG-TERM LIABILITIES		<u>(59,504,722)</u>
NET POSITION OF GOVERNMENTAL ACTIVITIES		<u><u>\$ (25,269,326)</u></u>

See accompanying notes to the basic financial statements

**TOWN OF HOPEDALE, MASSACHUSETTS
RECONCILIATION OF THE STATEMENT OF REVENUES, EXPENDITURES, AND
CHANGES IN FUND BALANCES OF GOVERNMENTAL FUNDS TO THE STATEMENT OF ACTIVITIES
FISCAL YEAR ENDED JUNE 30, 2020**

NET CHANGE IN FUND BALANCES - TOTAL GOVERNMENTAL FUNDS		\$ 2,247,674
<p>GOVERNMENTAL FUNDS REPORT CAPITAL OUTLAYS AS EXPENDITURES. HOWEVER, IN THE STATEMENT OF ACTIVITIES THE COST OF THOSE ASSETS IS ALLOCATED OVER THEIR ESTIMATED USEFUL LIVES AND REPORTED AS DEPRECIATION EXPENSE.</p>		
CAPITAL OUTLAY	1,229,864	
DEPRECIATION EXPENSE	<u>(1,398,883)</u>	
NET EFFECT OF REPORTING CAPITAL ASSETS		(169,019)
<p>REVENUES IN THE STATEMENT OF ACTIVITIES THAT DO NOT PROVIDE CURRENT FINANCIAL RESOURCES ARE FULLY DEFERRED IN THE STATEMENT OF REVENUES, EXPENDITURES AND CHANGES IN FUND BALANCES. THEREFORE, THE RECOGNITION OF REVENUE FOR VARIOUS TYPES OF ACCOUNTS RECEIVABLE (I.E. REAL ESTATE AND PERSONAL PROPERTY, MOTOR VEHICLE EXCISE, ETC.) DIFFER BETWEEN THE TWO STATEMENTS. THIS AMOUNT REPRESENTS THE NET CHANGE IN DEFERRED REVENUE</p>		
		360,418
<p>THE ISSUANCE OF LONG-TERM DEBT (E.G., BONDS) PROVIDES CURRENT FINANCIAL RESOURCES TO GOVERNMENTAL FUNDS, WHILE THE REPAYMENT OF THE PRINCIPAL OF LONG-TERM DEBT CONSUMES THE FINANCIAL RESOURCES OF GOVERNMENTAL FUNDS. NEITHER TRANSACTION, HOWEVER, HAS ANY EFFECT ON NET ASSETS. ALSO, GOVERNMENTAL FUNDS REPORT THE EFFECT OF ISSUANCE COSTS, PREMIUMS, DISCOUNTS, AND SIMILAR ITEMS WHEN DEBT IS FIRST ISSUED, WHEREAS THESE AMOUNTS ARE DEFERRED AND AMORTIZED IN THE STATEMENT OF ACTIVITIES.</p>		
PROCEEDS FROM BONDS AND NOTES	(2,330,000)	
DEBT SERVICE PRINCIPAL PAYMENTS	<u>929,268</u>	
NET EFFECT OF REPORTING LONG-TEM DEBT		(1,400,732)
<p>SOME EXPENSES REPORTED IN THE STATEMENT OF ACTIVITIES DO NOT REQUIRE THE USE OF CURRENT FINANCIAL RESOURCES AND, THEREFORE, ARE NOT REPORTED AS EXPENDITURES IN THE GOVERNMENTAL FUNDS.</p>		
NET CHANGE IN COMPENSATED ABSENCES ACCRUAL	22,769	
NET CHANGE IN POSTEMPLOYMENT BENEFITS	(1,801,058)	
NET CHANGE IN DEFERRED OUTFLOWS OF RESOURCES - RELATED TO POST EMPLOYMENT BENEFITS	(890,970)	
NET CHANGE IN DEFERRED INFLOWS OF RESOURCES - RELATED TO POST EMPLOYMENT BENEFITS	282,263	
NET CHANGE IN NET PENSION LIABILITY	394,042	
NET CHANGE IN DEFERRED OUTFLOWS OF RESOURCES - RELATED TO PENSIONS	(801,610)	
NET CHANGE IN DEFERRED INFLOWS OF RESOURCES - RELATED TO PENSIONS	(238,078)	
NET CHANGE IN CAPITAL LEASES	81,204	
NET DEFERRED UNAMORTIZED BOND PREMIUM	(226,811)	
NET CHANGE IN ACCRUED INTEREST ON LONG-TERM DEBT	<u>1,413</u>	
NET EFFECT OF RECORDING LONG-TERM LIABILITIES		<u>(3,176,836)</u>
CHANGE IN NET POSITION OF GOVERNMENTAL ACTIVITIES		<u>\$ (2,138,495)</u>

See accompanying notes to the basic financial statements

**TOWN OF HOPEDALE, MASSACHUSETTS
GENERAL FUND
STATEMENT OF REVENUES, EXPENDITURES, AND CHANGES IN FUND BALANCE - BUDGET AND ACTUAL
FISCAL YEAR YEAR ENDED JUNE 30, 2020**

	<u>BUDGETED AMOUNTS</u>		<u>ACTUAL BUDGETARY AMOUNTS</u>	<u>VARIANCE OVER(UNDER)</u>
	<u>ORIGINAL BUDGET</u>	<u>FINAL BUDGET</u>		
<u>REVENUES:</u>				
REAL ESTATE AND PERSONAL PROPERTY TAXES, NET OF TAX REFUNDS	\$ 15,195,477	\$ 15,195,477	\$ 15,199,851	\$ 4,374
MOTOR VEHICL EXCISE TAXES	850,000	850,000	854,704	4,704
INTERGOVERNMENTAL	7,641,974	7,641,974	7,662,545	20,571
PAYMENTS IN LIEU OF TAXES	52,000	52,000	56,769	4,769
PENALTIES & INTEREST ON TAXES	150,000	150,000	161,886	11,886
INVESTMENT INCOME	15,000	15,000	42,686	27,686
DEPARTMENTAL AND OTHER	151,800	151,800	365,677	213,877
	<u>24,056,251</u>	<u>24,056,251</u>	<u>24,344,118</u>	<u>287,867</u>
TOTAL REVENUES				
<u>EXPENDITURES:</u>				
CURRENT:				
GENERAL GOVERNMENT	1,239,082	1,221,038	1,086,603	134,435
PUBLIC SAFETY	2,878,267	3,035,967	2,841,454	194,513
EDUCATION	13,219,623	13,219,623	13,193,288	26,335
PUBLIC WORKS	805,717	768,455	709,703	58,752
HUMAN SERVICES	706,234	739,892	687,264	52,628
CULTURE & RECREATION	356,809	356,809	329,870	26,939
EMPLOYEE BENEFITS	4,232,597	4,469,545	4,182,321	287,224
STATE & COUNTY ASSESSMENTS	493,261	493,261	515,447	(22,186)
DEBT SERVICE				
PRINCIPAL	967,730	941,475	929,268	12,207
INTEREST	106,990	133,245	126,995	6,250
	<u>25,006,310</u>	<u>25,379,310</u>	<u>24,602,213</u>	<u>777,097</u>
TOTAL EXPENDITURES				
EXCESS (DEFICIENCY) OF REVENUES OVER EXPENDITURES	<u>(950,059)</u>	<u>(1,323,059)</u>	<u>(258,095)</u>	<u>1,064,964</u>
<u>OTHER FINANCING SOURCES (USES):</u>				
OPERATING TRANSFERS IN	601,260	601,260	601,260	-
	<u>601,260</u>	<u>601,260</u>	<u>601,260</u>	<u>-</u>
NET CHANGE IN FUND BALANCE	(348,799)	(721,799)	343,165	1,064,964
BUDGETARY FUND BALANCE, BEGINNING OF YEAR	1,483,208	1,483,208	1,483,208	-
BUDGETARY FUND BALANCE, END OF YEAR	<u>\$ 1,134,409</u>	<u>\$ 761,409</u>	<u>\$ 1,826,373</u>	<u>\$ 1,064,964</u>

See accompanying notes to the basic financial statements

**TOWN OF HOPEDALE, MASSACHUSETTS
 PROPRIETARY FUNDS
 STATEMENT OF NET POSITION
 JUNE 30, 2020**

<u>ASSETS</u>	BUSINESS-TYPE ACTIVITIES - ENTERPRISE FUNDS		
	<u>SEWER</u>	<u>WATER</u>	<u>TOTAL</u>
CURRENT:			
CASH AND SHORT-TERM INVESTMENTS	\$ 346,911	\$ 277,577	\$ 624,488
USER FEES	283,834	207,008	490,842
INTERGOVERNMENTAL	532,416	15,544	547,960
TOTAL CURRENT ASSETS	<u>1,163,161</u>	<u>500,129</u>	<u>1,663,290</u>
NONCURRENT:			
INTERGOVERNMENTAL	-	32,206	32,206
CAPITAL ASSETS, NET OF ACCUMULATED DEPRECIATION	9,451,637	8,289,114	17,740,751
TOTAL NONCURRENT ASSETS	<u>9,451,637</u>	<u>8,321,320</u>	<u>17,772,957</u>
TOTAL ASSETS	<u>10,614,798</u>	<u>8,821,449</u>	<u>19,436,247</u>
DEFERRED OUTFLOWS OF RESOURCES			
RELATED TO PENSIONS	18,278	18,278	36,556
RELATED TO POSTEMPLOYMENT BENEFITS	45,827	54,908	100,735
TOTAL DEFERRED INFLOWS OF RESOURCES	<u>64,105</u>	<u>73,186</u>	<u>137,291</u>
 <u>LIABILITIES</u>			
CURRENT:			
ACCOUNTS PAYABLE	124,337	53,708	178,045
ACCRUED INTEREST	54,960	3,726	58,686
BONDS AND NOTES PAYABLE	279,540	291,377	570,917
COMPENSATED ABSENCES	10,478	13,940	24,418
TOTAL CURRENT LIABILITIES	<u>469,315</u>	<u>362,751</u>	<u>832,066</u>
NONCURRENT:			
BONDS AND NOTES PAYABLE	5,822,778	3,214,106	9,036,884
COMPENSATED ABSENCES	20,816	97,974	118,790
POSTEMPLOYMENT BENEFITS	508,794	609,620	1,118,414
NET PENSION LIABILITY	216,594	216,594	433,188
TOTAL NONCURRENT LIABILITIES	<u>6,568,982</u>	<u>4,138,294</u>	<u>10,707,276</u>
TOTAL LIABILITIES	<u>7,038,297</u>	<u>4,501,045</u>	<u>11,539,342</u>
<u>DEFERRED INFLOWS OF RESOURCES</u>			
DEFERRED AMOUNT ON REFUNDING	90,000	-	90,000
RELATED TO PENSIONS	12,651	12,651	25,302
RELATED TO POSTEMPLOYMENT BENEFITS	14,661	17,566	32,227
TOTAL DEFERRED INFLOWS OF RESOURCES	<u>117,312</u>	<u>30,217</u>	<u>147,529</u>
 <u>NET POSITION</u>			
NET INVESTMENT IN CAPITAL ASSETS	4,321,754	4,783,631	9,105,385
UNRESTRICTED	(798,460)	(420,258)	(1,218,718)
TOTAL NET POSITION	<u>\$ 3,523,294</u>	<u>\$ 4,363,373</u>	<u>\$ 7,886,667</u>

See accompanying notes to the basic financial statements

**TOWN OF HOPEDALE, MASSACHUSETTS
 PROPRIETARY FUNDS
 STATEMENT OF REVENUES, EXPENSES, AND CHANGES IN NET POSITION
 FISCAL YEAR ENDED JUNE 30, 2020**

	<u>BUSINESS TYPE ACTIVITIES - ENTERPRISE FUNDS</u>		
	<u>SEWER</u>	<u>WATER</u>	<u>TOTAL</u>
<u>OPERATING REVENUES:</u>			
CHARGES FOR SERVICES	\$ 1,423,891	\$ 1,265,245	\$ 2,689,136
<u>OPERATING EXPENSES:</u>			
GENERAL SERVICES	842,439	772,359	1,614,798
DEPRECIATION	236,396	289,164	525,560
TOTAL OPERATING EXPENSES	<u>1,078,835</u>	<u>1,061,523</u>	<u>2,140,358</u>
OPERATING INCOME (LOSS)	<u>345,056</u>	<u>203,722</u>	<u>548,778</u>
<u>NON-OPERATING REVENUES (EXPENSES):</u>			
INTERGOVERNMENTAL	-	4,465	4,465
INTEREST INCOME	1,542	1,543	3,085
INTEREST EXPENSE	<u>(71,099)</u>	<u>(95,364)</u>	<u>(166,463)</u>
TOTAL NON-OPERATING REVENUES (EXPENSES), NET	<u>(69,557)</u>	<u>(89,356)</u>	<u>(158,913)</u>
INCOME (LOSS) BEFORE OPERATING TRANSFERS	<u>275,499</u>	<u>114,366</u>	<u>389,865</u>
<u>OPERATING TRANSFERS:</u>			
OPERATING TRANSFERS OUT	<u>(111,922)</u>	<u>(105,722)</u>	<u>(217,644)</u>
CHANGE IN NET POSITION	163,577	8,644	172,221
NET POSITION AT BEGINNING OF YEAR	<u>3,359,717</u>	<u>4,354,729</u>	<u>7,714,446</u>
NET POSITION AT END OF YEAR	<u>\$ 3,523,294</u>	<u>\$ 4,363,373</u>	<u>\$ 7,886,667</u>

See accompanying notes to the basic financial statements

**TOWN OF HOPEDALE, MASSACHUSETTS
 PROPRIETARY FUNDS
 STATEMENT OF CASH FLOWS
 FISCAL YEAR ENDED JUNE 30, 2020**

	<u>BUSINESS TYPE ACTIVITIES - ENTERPRISE FUNDS</u>		
	<u>SEWER</u>	<u>WATER</u>	<u>TOTAL</u>
<u>CASH FLOWS FROM OPERATING ACTIVITIES:</u>			
RECEIPTS FROM CUSTOMERS AND USERS	\$ 1,362,772	\$ 1,246,550	\$ 2,609,322
PAYMENTS TO SUPPLIERS	(529,025)	(386,385)	(915,410)
PAYMENTS TO EMPLOYEES	(299,951)	(282,222)	(582,173)
NET CASH PROVIDED (USED) BY OPERATING ACTIVITIES	<u>533,796</u>	<u>577,943</u>	<u>1,111,739</u>
<u>CASH FLOWS FROM NONCAPITAL FINANCING ACTIVITIES:</u>			
OPERATING TRANSFERS OUT	(111,922)	(105,722)	(217,644)
<u>CASH FLOWS FROM CAPITAL AND RELATED FINANCING ACTIVITIES:</u>			
PROCEEDS FROM THE ISSUANCE OF BONDS AND NOTES	961,477	-	961,477
PRINCIPAL PAYMENTS ON BONDS AND NOTES	(237,009)	(266,399)	(503,408)
ACQUISITION AND CONSTRUCTION OF CAPITAL ASSETS	(643,072)	-	(643,072)
INTEREST EXPENSE	(33,977)	(91,235)	(125,212)
NET CASH PROVIDED (USED) BY CAPITAL AND RELATED FINANCING ACTIVITIES	<u>47,419</u>	<u>(357,634)</u>	<u>(310,215)</u>
<u>CASH FLOWS FROM INVESTING ACTIVITIES:</u>			
INTEREST RECEIVED	1,542	1,543	3,085
NET INCREASE (DECREASE) IN CASH AND SHORT TERM INVESTMENTS	470,835	116,130	586,965
CASH AND SHORT TERM INVESTMENTS - BEGINNING OF YEAR	<u>(123,924)</u>	<u>161,447</u>	<u>37,523</u>
CASH AND SHORT TERM INVESTMENTS- END OF YEAR	<u>\$ 346,911</u>	<u>\$ 277,577</u>	<u>\$ 624,488</u>
<u>RECONCILIATION OF OPERATING INCOME (LOSS)</u>			
<u>TO NET CASH PROVIDED (USED) BY OPERATING ACTIVITIES:</u>			
OPERATING INCOME (LOSS)	<u>\$ 345,056</u>	<u>\$ 203,722</u>	<u>\$ 548,778</u>
ADJUSTMENTS TO RECONCILE OPERATING INCOME (LOSS)			
TO NET CASH PROVIDED (USED) BY OPERATING ACTIVITIES:			
DEPRECIATION	236,396	289,164	525,560
(INCREASE) DECREASE IN ACCOUNTS RECEIVABLE	(61,119)	(18,695)	(79,814)
(INCREASE) DECREASE IN DEFERRED OUTFLOWS OF RESOURCES	21,351	20,930	42,281
INCREASE (DECREASE) IN ACCOUNTS PAYABLE	(12,760)	28,215	15,455
INCREASE (DECREASE) IN COMPENSATED ABSENCES	(20,810)	3,510	(17,300)
INCREASE (DECREASE) IN POSTEMPLOYMENT BENEFITS	30,927	56,203	87,130
INCREASE (DECREASE) IN DEFERRED INFLOWS OF RESOURCES	848	987	1,835
INCREASE (DECREASE) IN NET PENSION LIABILITY	(6,093)	(6,093)	(12,186)
TOTAL ADJUSTMENTS	<u>188,740</u>	<u>374,221</u>	<u>562,961</u>
NET CASH PROVIDED (USED) BY OPERATING ACTIVITIES	<u>\$ 533,796</u>	<u>\$ 577,943</u>	<u>\$ 1,111,739</u>

See accompanying notes to the basic financial statements

**TOWN OF HOPEDALE, MASSACHUSETTS
FIDUCIARY FUND
STATEMENT OF FIDUCIARY NET POSITION
JUNE 30, 2020**

	<u>AGENCY FUNDS</u>
<u>ASSETS</u>	
INVESTMENTS	<u>\$ 138,519</u>
<u>LIABILITIES</u>	
ACCOUNTS PAYABLE	19,186
DUE TO OTHER FUNDS	35,498
OTHER LIABILITIES	<u>83,835</u>
TOTAL LIABILITIES	<u><u>\$ 138,519</u></u>

See accompanying notes to the basic financial statements

**TOWN OF HOPEDALE, MASSACHUSETTS
NOTES TO BASIC FINANCIAL STATEMENTS
JUNE 30, 2020**

NOTE 1 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

The accompanying basic financial statements of the Town of Hopedale, Massachusetts (the Town) have been prepared in accordance with accounting principles generally accepted in the United States of America (GAAP). The Governmental Accounting Standards Board (GASB) is the recognized standard-setting body for establishing governmental accounting and financial reporting principles. The following is a summary of the more significant Town accounting policies:

A. Reporting Entity

Primary Government

The Town is a municipal corporation that is governed by a three member Board of Selectmen (the Board). The Board is responsible for appointing a Town Administrator whose responsibility is to manage the day to day operations. For financial reporting purposes, the Town has included all funds, organizations, account groups, agencies, boards, commissions and institutions. The Town has also considered all potential component units, blended or discretely presented, for which it is financially accountable as well as other organizations for which the nature and significance of their relationship with the Town are such that exclusion would cause the basic financial statements to be misleading or incomplete. Blended component units, although legally separate entities, are, in substance, part of the government’s operations and discretely presented component units are reported in a separate column in the government-wide financial statements to emphasize that they are legally separate from the government. It has been determined that there are no component units (blended or discretely presented) for inclusion in the primary government’s financial reporting entity.

Joint Venture

Municipal joint ventures pool resources to share the costs, risks and rewards of providing services to their participants, the general public or others. The Town is a participant in the following joint venture:

Name	Purpose	Address	Annual Assessment
Blackstone Valley Regional Vocational-Technical High School	To provide vocational education	65 Pleasant Street Upton, MA 01568	\$ 549,955

The Blackstone Valley Regional Vocational-Technical High School (the District) is governed by a thirteen (13) member school committee consisting of one (1) elected representative from the Town of Hopedale. The Town is indirectly liable for debt and other expenditures of the District and is assessed annually for its share of the operating and capital costs. Separate financial statements may be obtained by writing to the Treasurer of the District at the above address. The Town has an equity interest of approximately 2.1% in the joint venture.

TOWN OF HOPEDALE, MASSACHUSETTS
NOTES TO BASIC FINANCIAL STATEMENTS
JUNE 30, 2020

B. Government-Wide and Fund Financial Statements

Government-Wide Financial Statements

The government-wide financial statements (i.e., statement of net position and the statement of activities) report information on all of the non-fiduciary activities of the primary government. *Governmental activities*, which are primarily supported by taxes and intergovernmental revenues, are reported separately from *business-type activities*, which are supported primarily by user fees and charges.

Fund Financial Statements

Separate financial statements are provided for governmental funds, proprietary funds, and fiduciary funds, even though fiduciary funds are excluded from the government-wide financial statements. Major individual governmental funds and major individual enterprise funds are reported as separate columns in the fund financial statements. Nonmajor funds are aggregated and displayed in a single column.

Major Fund Criteria

A fund is considered major if it is the primary operating fund of the Town or it meets the following criteria:

- a. If the total assets and deferred outflows of resources, liabilities and deferred inflows of resources, revenues, or expenditures/expenses of an individual governmental or enterprise fund are at least 10 percent of the corresponding element (assets and deferred outflows of resources, liabilities and deferred inflows of resources, etc.) for all funds of that category or type (total governmental or total enterprise funds), and
- b. If the total assets and deferred outflows of resources, liabilities and deferred inflows of resources revenues, or expenditures/expenses of the individual governmental fund or enterprise fund are at least 5 percent of the corresponding element for all governmental and enterprise funds combined.

Additionally, any other governmental or enterprise fund that management believes is particularly significant to the basic financial statements may be reported as a major fund.

Fiduciary funds are reported by fund type.

TOWN OF HOPEDALE, MASSACHUSETTS
NOTES TO BASIC FINANCIAL STATEMENTS
JUNE 30, 2020

C. Measurement Focus, Basis of Accounting and Financial Statement Presentation

Government-Wide Financial Statements

The government-wide financial statements are reported using the economic resources measurement focus and the accrual basis of accounting. Under this method, revenues are recorded when earned and expenses are recorded when the liabilities are incurred. Real estate and personal property taxes are recognized as revenues in the fiscal year for which they are levied. Grants and similar items are recognized as revenue as soon as all eligibility requirements imposed by the provider have been met.

The statement of activities demonstrates the degree to which the direct expenses of a particular function or segment are offset by program revenues. Direct expenses are those that are clearly identifiable with a specific function or segment. Program revenues include the following:

- a. *Charges to customers or applicants* who purchase, use, or directly benefit from goods, services, or privileges provided by a given function or segment.
- b. *Grants and contributions* that are restricted to meeting the operational requirements of a particular function or segment.
- c. *Grants and contributions* that are restricted to meeting the capital requirements of a particular function or segment.

Taxes and other items not identifiable as program revenues are reported as general revenues.

For the most part, the effect of interfund activity has been removed from the government-wide financial statements. Exceptions are charges between the general fund and the various enterprise funds. Elimination of these charges would distort the direct costs and program revenues reported for the functions affected.

Fund Financial Statements

Governmental Fund Financial Statements

Governmental fund financial statements are reported using the current financial resources measurement focus and the modified accrual basis of accounting. Under the modified accrual basis of accounting, revenues are recognized when susceptible to accrual (i.e., when they become both measurable and available). Measurable means the amount of the transaction can be determined and available means collectible within the current period or soon enough thereafter to pay liabilities of the current period.

Expenditures are recorded when the related fund liability is incurred, except for interest on general long-term debt which is recognized when due, and the noncurrent portion of compensated absences, capital leases, net pension liability, and postemployment benefits which are recognized when the obligations are expected to be liquidated with current expendable available resources.

TOWN OF HOPEDALE, MASSACHUSETTS
NOTES TO BASIC FINANCIAL STATEMENTS
JUNE 30, 2020

In applying the susceptible to accrual concept to intergovernmental revenues, there are essentially two types of revenues. In one, moneys must be expended on the specific purpose or project before any amounts will be paid to the Town; therefore, revenues are recognized based upon the expenditures incurred. In the other, moneys are virtually unrestricted and are usually revocable only for failure to comply with prescribed compliance requirements. These resources are reflected as revenues at the time of receipt or earlier if the susceptible to accrual criteria are met.

The Town considers property taxes as available if they are due and collected within 60 days after fiscal year-end. Licenses and permits, user charges, fines and forfeitures, and miscellaneous revenues are recorded as revenues when received. Investment earnings are recorded as earned.

The Town reports the following major governmental funds:

- The *General fund* is the primary operating fund of the Town. It is used to account for all financial resources, except those that are required to be accounted for in another fund.
- The *Nonmajor Governmental funds* consist of other special revenue, capital projects, and permanent funds that are aggregated and presented in the nonmajor governmental funds column on the governmental funds financial statements. The following describes the general use of these fund types:
 - The *Special Revenue fund* is used to account for the proceeds of specific revenue sources (other than permanent funds or capital projects funds) that are restricted by law or administrative action to expenditures for specified purposes.
 - The *Capital Projects fund* is used to account for financial resources to be used for the acquisition or construction of major capital facilities (other than those financed by enterprise and trust funds).
 - The *Permanent fund* is used to account for financial resources that are legally restricted to the extent that only earnings, not principal, may be used for purposes that support the governmental programs.

Proprietary Fund Financial Statements

Proprietary fund financial statements are reported using the flow of economic resources measurement focus and use the accrual basis of accounting. Under this method, revenues are recorded when earned and expenses are recorded when the liabilities are incurred.

Proprietary funds distinguish operating revenues and expenses from nonoperating items. Operating revenues and expenses generally result from providing services and producing and delivering goods in connection with the proprietary funds principal ongoing operations. All revenues and expenses not meeting this definition are reported as nonoperating revenues and expenses.

TOWN OF HOPEDALE, MASSACHUSETTS
NOTES TO BASIC FINANCIAL STATEMENTS
JUNE 30, 2020

The following major proprietary funds are reported:

- The *Water Enterprise fund* is used to account for water activities.
- The *Sewer Enterprise fund* is used to account for sewer activities.

Fiduciary Fund Financial Statements

Fiduciary fund financial statements are reported using the flow of economic resources measurement focus and use the accrual basis of accounting. Fiduciary funds are used to account for assets held by the Town in a trustee capacity for others that cannot be used to support the governmental programs.

The following fiduciary fund type is reported:

- The *Agency fund* is used to account for assets held in a purely custodial capacity

D. Cash and Investments

Government-Wide and Fund Financial Statements

Cash and short term investments are considered to be cash on hand, demand deposits and short-term investments with original maturities of three months or less from the date of acquisition. Investments are reported at fair value.

E. Fair Value Measurements

The Town reports required types of financial instruments in accordance with the fair value standards. These standards require an entity to maximize the use of observable inputs (such as quoted prices in active markets) and minimize the use of unobservable inputs (such as appraisals or valuation techniques) to determine fair value. Fair value standards also require the government to classify these financial instruments into a three-level hierarchy, based on the priority of inputs to the valuation technique or in accordance with net asset value practical expedient rules, which allow for either Level 2 or Level 3 depending on lock up and notice periods associated with the underlying funds. Instruments measured and reported at fair value are classified and disclosed in one of the following categories:

Level 1 – Quoted prices are available in active markets for identical instruments as of the reporting date. Instruments, which are generally included in this category, include actively traded equity and debt securities, U.S. government obligations, and mutual funds with quoted market prices in active markets.

Level 2 – Pricing inputs are other than quoted in active markets, which are either directly or indirectly observable as of the reporting date, and fair value is determined through the use of models or other valuation methodologies. Certain fixed income securities, primarily corporate bonds, are classified as Level 2 because fair values are estimated using pricing models, matrix pricing, or discounted cash flows.

TOWN OF HOPEDALE, MASSACHUSETTS
NOTES TO BASIC FINANCIAL STATEMENTS
JUNE 30, 2020

Level 3 – Pricing inputs are unobservable for the instrument and include situations where there is little, if any, market activity for the instrument. The inputs into the determination of fair value require significant management judgment or estimation. In some instances the inputs used to measure fair value may fall into different levels of the fair value hierarchy and is based on the lowest level of input that is significant to the fair value measurement. Market price is affected by a number of factors, including the type of instrument and the characteristics specific to the instrument. Instruments with readily available active quoted prices generally will have a higher degree of market price observability and a lesser degree of judgment used in measuring fair value. It is reasonably possible that change in values of these instruments will occur in the near term and that such changes could materially affect amounts reported in these financial statements. For more information on the fair value of the Town’s financial instruments, see Note 3 – Fair Market Value of Investments.

F. Accounts Receivable

Government-Wide and Fund Financial Statements

The recognition of revenue related to accounts receivable reported in the government-wide financial statements and proprietary funds financial statements are reported under the accrual basis of accounting. The recognition of revenue related to accounts receivable reported in the governmental funds financial statements are reported under the modified accrual basis of accounting.

Real Estate, Personal Property Taxes and Tax Liens

Real estate and personal property taxes are based on values assessed as of each January 1 and are normally due on the subsequent August 1, November 1, February 1 and May 1. Property taxes that remain unpaid after the respective due dates are subject to penalties and interest charges. By law, all taxable property in the Commonwealth must be assessed at 100% of fair market value. Once levied, which is required to be at least 30 days prior to the due date, these taxes are recorded as receivables in the fiscal year of levy. Based on the Town’s experience, most property taxes are collected during the year in which they are assessed. Liening of properties on which taxes remain unpaid occurs annually. The Town ultimately has the right to foreclose on all properties where the taxes remain unpaid.

A statewide property tax limitation statute known as “Proposition 2 ½” limits the amount of increase in property tax levy in any fiscal year. Generally, Proposition 2 ½ limits the total levy to an amount not greater than 2 ½ % of the total assessed value of all taxable property within the Town. Secondly, the tax levy cannot increase by more than 2 ½ % of the prior year’s levy plus the taxes on property newly added to the tax rolls. Certain provisions of Proposition 2 ½ can be overridden by a Town-wide referendum.

Real estate receivables are secured via the tax lien process and are considered 100% collectible. Accordingly, an allowance for uncollectibles is not reported.

Personal property taxes cannot be secured through the lien process. The allowance of uncollectibles is estimated based on historical trends and specific account analysis.

TOWN OF HOPEDALE, MASSACHUSETTS
NOTES TO BASIC FINANCIAL STATEMENTS
JUNE 30, 2020

Motor Vehicle Excise

Motor vehicle excise taxes are assessed annually for each vehicle registered in the Town and are recorded as receivables in the fiscal year of the levy. The Commonwealth is responsible for reporting the number of vehicles registered and the fair values of those vehicles. The tax calculation is the fair value of the vehicle multiplied by \$25 per \$1,000 of value.

The allowance for uncollectibles is estimated based on historical trends and specific account analysis.

Water and Sewer

User fees are levied monthly based on residential and commercial meter readings and are subject to penalties and interest if they are not paid by the respective due date. Water and sewer liens are processed annually and included as a lien on the property owner's tax bill. Water and sewer charges and related liens are recorded as receivables in the fiscal year of the levy.

Since the receivables are secured via the lien process, these accounts are considered 100% collectible and therefore do not report an allowance for uncollectibles.

Departmental and Other

Departmental and other receivables consist of ambulance receivables and are recorded as receivables in the fiscal year accrued. The allowance for uncollectibles for the ambulance receivable is estimated based on historical trends and specific account analysis.

Intergovernmental

Various federal and state grants for operating and capital purposes are applied for and received annually. For non-expenditure driven grants, receivables are recognized as soon as all eligibility requirements imposed by the provider have been met. For expenditure driven grants, receivables are recognized when the qualifying expenditures are incurred and all other grant requirements are met.

These receivables are considered 100% collectible and therefore do not report an allowance for uncollectibles.

G. Inventories

Government-Wide and Fund Financial Statements

Inventories of the governmental funds and the water and sewer enterprise funds are recorded as expenditures at the time of purchase. Such inventories are not material in total to the basic financial statements, and therefore are not reported.

TOWN OF HOPEDALE, MASSACHUSETTS
NOTES TO BASIC FINANCIAL STATEMENTS
JUNE 30, 2020

H. Capital Assets

Government-Wide and Proprietary Fund Financial Statements

Capital assets, which include land, vehicles, buildings and improvements, furniture, fixtures and equipment, infrastructure (e.g., water mains, sewer mains, roadways, and similar items), and construction in progress, are reported in the applicable governmental or business-type activities column of the government-wide financial statements, and the proprietary fund financial statements. Capital assets are recorded at historical cost, or at estimated historical cost, if actual historical cost is not available. Donated capital assets are recorded at the estimated fair market value at the date of donation. Except for the capital assets of the governmental activities column in the government-wide financial statements, construction period interest is capitalized on constructed capital assets if material.

All purchases and construction costs in excess of \$5,000 are capitalized at the date of acquisition or construction, respectively, with expected useful lives of five years or greater.

Capital assets (excluding land and construction in progress) are depreciated on a straight-line basis. The estimated useful lives of capital assets are as follows:

<u>Asset Class</u>	<u>Estimated Useful Life (in years)</u>
Buildings and Improvements	20-40
Furniture, Fixtures and Equipment	5-10
Vehicles	5-15
Infrastructure	10-20

The cost of normal maintenance and repairs that do not add to the value of the assets or materially extend asset lives are not capitalized and are treated as expenses when incurred. Improvements are capitalized.

Governmental Fund Financial Statements

Capital asset costs are recorded as expenditures in the fiscal year of purchase for the various funds.

I. Interfund Receivables and Payables

During the course of its operations, transactions occur between and within individual funds that may result in amounts owed between funds.

Government-Wide Financial Statements

Transactions of a buyer/seller nature between and within governmental funds are eliminated from the governmental activities in the statement of net position. Any residual balances outstanding between the governmental activities and business-type activities are reported in the statement of net position as "internal balances".

TOWN OF HOPEDALE, MASSACHUSETTS
NOTES TO BASIC FINANCIAL STATEMENTS
JUNE 30, 2020

Fund Financial Statements

Transactions of a buyer/seller nature between and within funds are not eliminated from the individual fund statements. Receivables and payables resulting from these transactions are classified as "Due from other funds" or "Due to other funds" on the balance sheet.

J. Interfund Transfers

During the course of its operations, resources are permanently reallocated between and within funds. These transactions are reported as operating transfers in and operating transfers out.

Government-Wide Financial Statements

Operating transfers between and within governmental funds are eliminated from the governmental activities in the statement of net position. Any residual balances outstanding between the governmental activities and business-type activities are reported in the statement of activities as "Transfers, net".

Fund Financial Statements

Operating transfers between and within funds are not eliminated from the individual fund statements and are reported as operating transfers in and operating transfers out.

K. Deferred Outflows/Inflows of Resources

Government-Wide Financial Statements (Net Position)

In addition to assets, the statement of financial position will sometimes report a separate section for deferred outflows of resources. This separate financial statement element, *deferred outflows of resources*, represents a consumption of net position that applies to a future period(s) and so will *not* be recognized as an outflow of resources (expense/ expenditure) until then. The Town reported deferred outflows of resources related to postemployment benefits and pensions in this category.

In addition to liabilities, the statement of financial position will sometimes report a separate section for deferred inflows of resources. This separate financial statement element, *deferred inflows of resources*, represents an acquisition of net position that applies to a future period(s) and so will *not* be recognized as an inflow of resources (revenue) until that time. The Town reported deferred inflows of resources related to postemployment benefits, pensions, and deferred amount of refunding in this category.

Governmental Funds Financial Statements

In addition to liabilities, the governmental funds balance sheet will sometimes report a separate section for deferred inflows of resources. This separate financial statement element, deferred inflows of resources, represents assets that have been recorded in the governmental fund financial statements but the revenue is not available and so will not be recognized as an inflow of resources (revenue) until it becomes available. The Town has recorded unavailable revenue as deferred inflows of resources in the governmental funds balance sheet. Unavailable revenue is recognized as revenue in the conversion to the government-wide (full accrual) financial statements.

TOWN OF HOPEDALE, MASSACHUSETTS
NOTES TO BASIC FINANCIAL STATEMENTS
JUNE 30, 2020

L. Net Position and Fund Equity

Government-Wide Financial Statements (Net Position)

Net position are classified into three components:

- a. *Net investment in capital assets* – consists of capital assets including restricted capital assets, net of accumulated depreciation and reduced by the outstanding balances of any bonds, mortgages, notes, or other borrowings that are attributable to the acquisition, construction, or improvement of those assets.
- b. *Restricted net position* – Consists of net position with constraints placed on the use either by (1) external groups such as creditors, grantors, contributors, or laws or regulations of other governments; or (2) law through constitutional provisions or enabling legislation.

Net position have been “restricted” for the following:

- *Permanent funds – Expendable* represents amounts held in trust for which the expenditures are restricted by various trust agreements.
 - *Permanent funds – Nonexpendable* represents amounts held in trust for which only investment earnings may be expended.
 - *Other specific purposes* represents restrictions placed on assets from outside parties.
- c. *Unrestricted net position* – All other net position that do not meet the definition of “restricted” or “net investment in capital assets”.

Fund Financial Statements (Fund Balances)

The Town uses the following criteria for fund balance classification:

- For *nonspendable* fund balance: includes amounts that cannot be spent because they are either (1) not in spendable form or (2) legally or contractually required to be maintained intact.
- For *restricted* fund balance: when constraints placed on the use of the resources are either (1) externally imposed by creditors, grantors, contributors, or laws or regulations of other governments; or (2) imposed by law through constitutional provisions or enabling legislation.
- For *committed* fund balance: (1) the government’s highest level of decision-making authority and (2) the formal action that is required to be taken to establish (and modify or rescind) a fund balance commitment.
- For *assigned* fund balance: (1) the body or official authorized to assign amounts to a specific purpose and (2) the policy established by the governing body pursuant to which the authorization is given.

TOWN OF HOPEDALE, MASSACHUSETTS
NOTES TO BASIC FINANCIAL STATEMENTS
JUNE 30, 2020

- For *unassigned* fund balance: is the residual classification for the general fund. In other governmental funds, if expenditures incurred for specific purposes exceeded the amounts restricted, committed, or assigned to those purposes, it may be necessary to report a negative unassigned fund balance.

The Town uses the following criteria for fund balance policies and procedures:

- When an expenditure is incurred for purposes for which both restricted and unrestricted fund balance is available, the unrestricted amount will be considered to have been spent.
- When an expenditure is incurred for purposes for which committed, assigned, or unassigned fund balance is available, the least restricted amount will be considered to have been spent.

M. Long-term debt

Government-Wide and Proprietary Fund Financial Statements

Long-term debt is reported as liabilities in the government-wide and proprietary fund statement of net position. Material bond premiums and discounts are deferred and amortized over the life of the bonds using the effective interest method. Bonds payable are reported net of the applicable bond premium or discount.

Governmental Fund Financial Statements

The face amount of governmental funds long-term debt is reported as other financing sources. Bond premiums and discounts, as well as issuance costs, are recognized in the current period. Bond premiums are reported as other financing sources and bond discounts are reported as other financing uses. Issuance costs, whether or not withheld from the actual bond proceeds received, are reported as general government expenditures.

N. Investment Income

Excluding the permanent funds, investment income derived from major and nonmajor governmental funds is legally assigned to the general fund unless otherwise directed by Massachusetts General Laws (MGL).

O. Compensated Absences

Employees are granted sick and vacation leave in varying amounts. Upon retirement, termination or death, certain employees are compensated for unused sick and vacation leave (subject to certain limitations) at their then current rates of pay.

Government-Wide and Proprietary Fund Financial Statements

The total amount to be paid in future years is presented in the government-wide and proprietary funds statement of net position. The liability for vacation leave is based on the amount earned but not used; for sick leave, it is based on the amount accumulated at the balance sheet date (vesting method).

TOWN OF HOPEDALE, MASSACHUSETTS
NOTES TO BASIC FINANCIAL STATEMENTS
JUNE 30, 2020

Governmental Fund Financial Statements

The portion of the liability related to unused sick and vacation time that has matured or is due as of June 30, 2020 is recorded in the governmental fund financial statement.

P. Pensions

For purposes of measuring the net pension liability, deferred outflows of resources and deferred inflows of resources related to pensions, and pension expense, information about the fiduciary net pension of the Worcester Regional Retirement System (System) and the Massachusetts Teachers Retirement System (MTRS). Additions to/deductions from the System's fiduciary net position have been determined on the same basis as they are reported by the System. For this purpose, benefit payments (including refunds of employee contributions) are recognized when due and payable in accordance with the benefit terms. Investments are reported at fair value.

Q. Post Retirement Benefits

Government-Wide and Fund Financial Statements

In addition to providing pension benefits, health insurance coverage is provided for retired employees and their survivors in accordance with Chapter 32B of Massachusetts General Laws, under various contributory plans. The cost of providing health insurance is recognized by recording the employer's 50% share of insurance premiums in the general fund in the fiscal year paid. All benefits are provided through third-party insurance carriers and health maintenance organizations that administer, assume, and pay all claims.

R. Use of Estimates

Government-Wide and Fund Financial Statements

The preparation of the accompanying financial statements in conformity with accounting principles generally accepted in the United States of America, requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenditures/expenses during the reporting period. Actual results could vary from estimates that were used.

S. Total Column

Government-Wide Financial Statements

The total column presented on the government-wide financial statements represents consolidated financial information.

Fund Financial Statements

The total column on the fund financial statements is presented only to facilitate financial analysis. Data in this column is not comparable to the consolidated financial information.

TOWN OF HOPEDALE, MASSACHUSETTS
NOTES TO BASIC FINANCIAL STATEMENTS
JUNE 30, 2020

NOTE 2 – STEWARDSHIP, COMPLIANCE AND ACCOUNTABILITY

A. Budgetary Basis of Accounting

Pursuant to Chapter 44, Section 32 of the Massachusetts General Laws, the Town adopts an annual budget for the general fund. The budgets for all departments and operations of the Town, except that of the public schools, are prepared under the direction of the Town Administrator. The School Department budget is prepared under the direction of the School Committee. The level of expenditures may not legally exceed appropriations for each department or undertaking in the following categories: (1) salaries and wages; (2) ordinary maintenance; (3) and capital outlays.

The majority of appropriations are non-continuing which lapse at the end of each fiscal year. Others are continuing appropriations for which the governing body has authorized that an unspent balance from a prior fiscal year be carried forward and made available for spending in the current fiscal year. These carry forwards are included as part of the subsequent fiscal year's original budget.

Original and supplemental appropriations are enacted upon by a Town Meeting vote. Management may not amend the budget without seeking the approval of the governing body. The Town's Finance Committee can legally transfer funds from its reserve fund to other appropriations within the budget without seeking Town Meeting approvals. The original fiscal year 2020 approved budget authorized \$24,884,511 in current year appropriations and other amounts to be raised, and \$121,799 in encumbrances and appropriations carried over from previous fiscal years. Supplemental appropriations of \$373,000 were approved at one Special Town Meeting during fiscal year 2020.

The Town Accountant has the responsibility to ensure that budgetary controls are maintained and monitored through the accounting system.

B. Budgetary – GAAP Reconciliation

For budgetary financial reporting purposes, the Uniform Municipal Accounting System basis of accounting (established by the Commonwealth) is followed, which differs from the GAAP basis of accounting. A reconciliation of budgetary-basis to GAAP-basis results for the general fund for the fiscal year ended June 30, 2020, is presented below:

Net change in fund balance - budgetary basis	\$ 343,165
Basis of accounting differences:	
Net Stabilization fund activity	21,665
Increase in revenue for on-behalf payments - MTRS	3,660,244
Increase in expenditures for on-behalf payments - MTRS	<u>(3,660,244)</u>
Net change in fund balance - GAAP basis	<u>\$ 364,830</u>

TOWN OF HOPEDALE, MASSACHUSETTS
NOTES TO BASIC FINANCIAL STATEMENTS
JUNE 30, 2020

C. Deficit Fund Balances

Several individual fund deficits exist within the special revenue and capital project fund. These individual deficits will be eliminated through subsequent fiscal year budget transfers, grants, and/or proceeds from long-term debt during fiscal year 2021.

NOTE 3 – DEPOSITS AND INVESTMENTS

State and local statutes place certain limitations on the nature of deposits and investments available to the Town. Deposits (including demand deposits, term deposits and certificates of deposit) in any one financial institution may not exceed certain levels unless collateralized by the financial institutions involved.

Deposits

▪ *Custodial Credit Risk – Deposits*

Custodial credit risk is the risk that in the event of bank failure, the Town's deposits may not be returned. Massachusetts General Law Chapter 44, Section 55, limits the deposits "in a bank or trust company, or banking company to an amount not exceeding sixty percent (60%) of the capital and surplus of such bank or trust company or banking company, unless satisfactory security is given to it by such bank or trust company or banking company for such excess."

The Town does not have a formal deposit policy for custodial credit risk.

The Town carries deposits that are fully insured by the Federal Deposit Insurance Corporation (FDIC), and the Depositor's Insurance Fund (DIF). The Town also carries deposits that are uninsured and uncollateralized.

TOWN OF HOPEDALE, MASSACHUSETTS
NOTES TO BASIC FINANCIAL STATEMENTS
JUNE 30, 2020

The following table illustrates how much of the Town's bank deposits are insured and how much of the Town's bank deposits are uninsured and uncollateralized as of June 30, 2020:

Total bank balances		<u>\$ 6,061,692</u>
Bank balances covered by deposit insurance		
Federal Deposit Insurance Corporation (FDIC)	1,207,720	
Depositors Insurance Fund (DIF)	<u>3,953,487</u>	
Total bank balances covered by deposit insurance		5,161,207
Balances subject to custodial credit risk		
Bank balances uninsured & uncollateralized	<u>900,485</u>	
Total bank balances subject to custodial credit risk		<u>900,485</u>
Total bank balances		<u>\$ 6,061,692</u>

Investments

Investments can also be made in securities issued by or unconditionally guaranteed by the U.S. government or agencies that have a maturity of less than one year from the date of purchase, repurchase agreement guaranteed by the U.S. government or agencies that have a maturity of less than one year from the date of purchase, repurchase agreements guaranteed by such securities with maturity dates of no more than 90 days from the date of purchase, and units in the Massachusetts Municipal Depository Trust (MMDT). The Treasurer of the Commonwealth of Massachusetts oversees the financial management of the MMDT, a local investment pool for cities, towns, and other state and local agencies within the Commonwealth. The Town's fair value of its investment in MMDT represents their value of the pool's shares. The Town's Trust Funds have expanded investment powers including the ability to invest in equity securities, corporate bonds, annuities and other specified investments.

The composition of the Town's bank recorded deposits and investments fluctuates depending primarily on the timing of property tax receipts, proceeds from borrowings, collections of state and federal aid, and capital outlays throughout the year.

a) Credit Risk

Generally, credit risk is the risk that an issuer of an investment will not fulfill its obligation to the holder of the investment. For short-term investments that were purchased using surplus revenues, Massachusetts General Law Chapter 44, Section 55, limits the Town's investments to the top rating issued by at least one nationally recognized statistical rating organization (NRSROs).

TOWN OF HOPEDALE, MASSACHUSETTS
NOTES TO BASIC FINANCIAL STATEMENTS
JUNE 30, 2020

Presented below is the actual rating as of year-end for each investment type of the Town.

Investment type	Fair value	Minimum Legal Rating	Rating as of Year End						
			Aaa	A1	A2	A3	Baa1	Baa2	Unrated
U.S. Government & Agency Securities	\$ 566,957	N/A	\$ 566,957	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Certificates of Deposit	271,403	N/A	-	-	-	-	-	-	271,403
Common Stock	164,387	N/A	-	-	-	-	-	-	164,387
Corporate Bonds	759,178	N/A	70,624	91,926	171,225	81,088	172,999	171,316	-
Fixed Income Mutual Funds	37,462	N/A	-	-	-	-	-	-	37,462
Money Market Mutual Funds	42,560	N/A	-	-	-	-	-	-	42,560
Total Investments	\$ 1,841,947		\$ 637,581	\$ 91,926	\$ 171,225	\$ 81,088	\$ 172,999	\$ 171,316	\$ 515,812

The Town has not adopted a formal policy related to credit risk.

b) Custodial Credit Risk

For an investment, this is the risk that, in the event of a failure by the counterparty, the Town will not be able to recover the value of its investments or collateral security that are in possession of an outside party. The Town has no custodial credit risk exposure related to the corporate bonds, U.S. Government & Agency securities, certificates of deposit, and common stock because the related securities are registered in the name of the Town. The fixed-income and money market mutual funds investments are not exposed to custodial credit risk because their existence is not evidenced by securities that exist in physical or book entry form.

The Town does not have an investment policy for custodial credit risk.

c) Interest Rate Risk

Interest rate risk is the risk of changes in market interest rates which will adversely affect the fair value of an investment. Generally, the longer the maturity of an investment, the greater the risk of its fair value to change with the market interest rates. The Town does not have a formal investment policy that limits investment maturities as a means of managing its exposure to fair value losses arising from increasing interest rates.

TOWN OF HOPEDALE, MASSACHUSETTS
NOTES TO BASIC FINANCIAL STATEMENTS
JUNE 30, 2020

Information about the sensitivity of the fair values of the Town's investments to market interest rate fluctuations is as follows:

<u>Investment type</u>	<u>Fair value</u>	<u>Investment maturities (in years)</u>	
		<u>Less than 1</u>	<u>1-5</u>
<u>Debt Related Securities:</u>			
U.S. Government & Agency Bonds	\$ 566,957	\$ 145,663	\$ 421,294
Fixed Income Mutual Funds	37,462	37,462	-
Certificates of Deposit	271,403	189,315	82,088
Corporate Bonds	759,178	287,708	471,470
Total - Debt related securities	<u>1,635,000</u>	<u>660,148</u>	<u>974,852</u>
<u>Other Investments:</u>			
Common Stock	164,387	164,387	-
Money Market Mutual Funds	42,560	42,560	-
Total Other Investments	<u>206,947</u>	<u>206,947</u>	<u>-</u>
Total Investments	<u>\$ 1,841,947</u>	<u>\$ 867,095</u>	<u>\$ 974,852</u>

TOWN OF HOPEDALE, MASSACHUSETTS
NOTES TO BASIC FINANCIAL STATEMENTS
JUNE 30, 2020

d) Concentration of Credit Risk

The Town places no limit on the amount the government may invest in any one issuer. More than 5% of the Town's investments are in the following securities:

Issuer	Percentage of Total Investments
AT&T - Corporate Bonds	5.44%
Georgia Power - Corporate Bonds	5.37%

e.) Fair Market Value of Investments

The Town holds investments that are measured at fair value on a recurring basis. Because investing is not a core part of the Town's mission, the Town determines that the disclosures related to these investments only need to be disaggregated by the major type. The Town chooses a tabular format for disclosing the levels within the fair value hierarchy.

The Town categorizes its fair value measurement within the fair value hierarchy established by generally accepted accounting principles. The hierarchy is based on the valuation inputs used to measure the fair value of the assets. Level 1 inputs are quoted prices in active markets for identical assets; Level 2 inputs are significant other observable inputs; Level 3 inputs are significant unobservable inputs.

TOWN OF HOPEDALE, MASSACHUSETTS
NOTES TO BASIC FINANCIAL STATEMENTS
JUNE 30, 2020

The Town has the following recurring fair value measurement as of June 30, 2020.

Investment Type	June 30, 2020	Fair Value Measurements Using		
		Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Debt securities				
U.S. Government and Agency	\$ 566,957	\$ 566,957	\$ -	\$ -
Corporate Bonds	759,178	-	759,178	-
Certificates of Deposit	271,403	271,403	-	-
Fixed Income Mutual Funds	37,462	-	37,462	-
Total debt securities	1,635,000	838,360	796,640	-
Other Investments				
Common Stock	164,387	164,387	-	-
Money Market Mutual Funds	42,560	42,560	-	-
Total other investments	206,947	206,947	-	-
Total investments measured at fair value	1,841,947	\$ 1,045,307	\$ 796,640	\$ -
Investments measured at amortized cost				
Massachusetts Municipal Depository Trust - (MMDT)	157,886			
Total Investments	\$ 1,999,833			

U.S. Government and Agency, Common Stock, Certificates of Deposit, and Money Market Mutual Funds classified in Level 1 of the fair value hierarchy are valued using prices quoted in active markets for those securities. Corporate bonds and fixed income mutual funds classified in Level 2 of the fair value hierarchy are valued using a matrix pricing technique. Matrix pricing is used to value securities based on the securities relationship to benchmark quoted prices.

Massachusetts Municipal Depository Trust (MMDT) investments are valued at amortized cost. Under the amortized cost method an investment is valued initially at its cost and adjusted for the amount of interest income accrued each day over the term of the investment to account for any difference between the initial cost and the amount payable at its maturity. If amortized cost is determined not to approximate fair value, the value of the portfolio securities will be determined under procedures established by the Advisor.

**TOWN OF HOPEDALE, MASSACHUSETTS
NOTES TO BASIC FINANCIAL STATEMENTS
JUNE 30, 2020**

NOTE 4 – RECEIVABLES

The receivables at June 30, 2020 for the Town’s individual major and non-major governmental funds, in the aggregate, including the applicable allowances for uncollectible accounts, are as follows:

Receivables:	Gross Amount	Allowance for Uncollectibles	Net Amount
Real estate and personal property taxes	\$ 390,339	\$ (70,900)	\$ 319,439
Tax liens	731,914	-	731,914
Motor vehicle excise taxes	120,010	(31,200)	88,810
Departmental and other	351,474	(236,550)	114,924
Intergovernmental	128,598	-	128,598
Total	<u>\$ 1,722,335</u>	<u>\$ (338,650)</u>	<u>\$ 1,383,685</u>

The receivables at June 30, 2020, for the enterprise funds consist of the following:

Receivables:	Gross Amount	Allowance for Uncollectibles	Net Amount
<i>Water</i>			
User fees	\$ 207,008	\$ -	\$ 207,008
Intergovernmental	15,544	-	15,544
<i>Sewer</i>			
User fees	283,834	-	283,834
Intergovernmental	532,416	-	532,416
Total	<u>\$ 1,038,802</u>	<u>\$ -</u>	<u>\$ 1,038,802</u>

**TOWN OF HOPEDALE, MASSACHUSETTS
NOTES TO BASIC FINANCIAL STATEMENTS
JUNE 30, 2020**

Governmental funds report deferred inflows of resources in connection with receivables for revenues that are not considered to be available to liquidate liabilities of the current period. Governmental funds also defer revenue recognition in connection with revenues that have been received, but not yet earned. At the end of the current fiscal year, the various components of deferred inflows of resources reported in the governmental funds were as follows:

Deferred Inflows of Resources Analysis			
Deferred Inflows:	General Fund	Nonmajor Governmental Funds	Total
Deferred Property Taxes	\$ 935,109	\$ -	\$ 935,109
Deferred Other Revenue	88,810	114,924	203,734
 Total	 \$ 1,023,919	 \$ 114,924	 \$ 1,138,843

TOWN OF HOPEDALE, MASSACHUSETTS
NOTES TO BASIC FINANCIAL STATEMENTS
JUNE 30, 2020

NOTE 5 – CAPITAL ASSETS

Capital asset activity for the fiscal year ended June 30, 2020 was as follows:

Governmental Activities:	Beginning Balance	Increases	Decreases	Ending Balance
<i>Capital assets not being depreciated:</i>				
Land	\$ 3,986,749	\$ -	\$ -	\$ 3,986,749
Construction in progress	94,553	-	(62,342)	32,211
Total capital assets not being depreciated	4,081,302	-	(62,342)	4,018,960
<i>Capital assets being depreciated:</i>				
Buildings and improvements	30,312,478	22,828	17,379	30,352,685
Furniture, fixtures and equipment	1,703,245	-	-	1,703,245
Vehicles	3,437,663	520,404	44,963	4,003,030
Infrastructure	16,026,633	686,632	-	16,713,265
Total capital assets being depreciated	51,480,019	1,229,864	62,342	52,772,225
<i>Less accumulated depreciation for:</i>				
Buildings and improvements	(15,994,681)	(725,948)	-	(16,720,629)
Furniture, fixtures and equipment	(1,248,364)	(66,341)	-	(1,314,705)
Vehicles	(2,580,588)	(243,182)	-	(2,823,770)
Infrastructure	(7,776,945)	(363,412)	-	(8,140,357)
Total accumulated depreciation	(27,600,578)	(1,398,883)	-	(28,999,461)
Total capital assets being depreciated, net	23,879,441	(169,019)	62,342	23,772,764
Total governmental activities capital assets, net	\$ 27,960,743	\$ (169,019)	\$ -	\$ 27,791,724

TOWN OF HOPEDALE, MASSACHUSETTS
NOTES TO BASIC FINANCIAL STATEMENTS
JUNE 30, 2020

Business-Type Activities:	Beginning Balance	Increases	Decreases	Ending Balance
<i>Capital assets not being depreciated :</i>				
Land	\$ 406,161	\$ -	\$ -	\$ 406,161
Construction in progress	5,148,432	343,154	-	5,491,586
Total capital assets not being depreciated	5,554,593	343,154	-	5,897,747
<i>Capital assets being depreciated:</i>				
Buildings and improvements	7,543	-	-	7,543
Furniture, fixtures and equipment	558,317	-	-	558,317
Vehicles	282,250	-	-	282,250
Infrastructure	24,542,545	-	-	24,542,545
Total capital assets being depreciated	25,390,655	-	-	25,390,655
<i>Less accumulated depreciation for:</i>				
Buildings and improvements	(7,543)	-	-	(7,543)
Furniture, fixtures and equipment	(352,810)	(13,228)	-	(366,038)
Vehicles	(201,867)	(15,989)	-	(217,856)
Infrastructure	(12,459,871)	(496,343)	-	(12,956,214)
Total accumulated depreciation	(13,022,091)	(525,560)	-	(13,547,651)
Total capital assets being depreciated, net	12,368,564	(525,560)	-	11,843,004
Total business-type activities capital assets, net	\$ 17,923,157	\$ (182,406)	\$ -	\$ 17,740,751

**TOWN OF HOPEDALE, MASSACHUSETTS
NOTES TO BASIC FINANCIAL STATEMENTS
JUNE 30, 2020**

Depreciation expense was charged to functions/programs of the primary government as follows:

Governmental Activities:	
General government	\$ 12,737
Public safety	226,264
Education	694,754
Public works	434,291
Culture and recreation	30,837
Total depreciation expense - governmental activities	\$ 1,398,883
Business-Type Activities:	
Water	\$ 289,164
Sewer	236,396
Total depreciation expense - business-type activities	\$ 525,560

NOTE 6 – CAPITAL LEASES

The Town has entered into lease agreements as lessee for financing the acquisition of ambulance, and a freightliner. The lease agreements qualify as capital leases for accounting purposes and, therefore, have been recorded at the present value of the future minimum lease payments as of the inception date.

The assets acquired through the capital leases are as follows:

	Governmental Activities
Assets:	
Vehicles	\$ 221,453
Less: Accumulated depreciation	(55,249)
	\$ 166,204

**TOWN OF HOPEDALE, MASSACHUSETTS
NOTES TO BASIC FINANCIAL STATEMENTS
JUNE 30, 2020**

The future minimum lease obligations and the net present value of the minimum lease payments as of June 30, 2020, are as follows:

Year Ending June 30	Governmental Activites
2021	\$ 48,693
2022	49,461
Total : Minimum lease payments	98,154
Less : Amounts representing interest	(5,409)
Present Value of minimum lease payments	\$ 92,745

NOTE 7 – INTERFUND TRANSFERS

Interfund transfers for the fiscal year ended June 30, 2020, are summarized as follows:

Operating Transfers Out:	Operating Transfers In: General Fund
Nonmajor Governmental Funds	\$ 383,616 (1)
Water Enterprise Fund	105,722 (1)
Sewer Enterprise Fund	111,922 (1)
Total	\$ 601,260

(1) Represents budgeted transfers to supplement the operating budget

**TOWN OF HOPEDALE, MASSACHUSETTS
NOTES TO BASIC FINANCIAL STATEMENTS
JUNE 30, 2020**

NOTE 8 – SHORT-TERM FINANCING

Under state law, and with the appropriate authorization, the Town is authorized to borrow funds on a temporary basis as follows:

- To fund current operations prior to the collection of revenues by issuing revenue anticipation notes (RANS).
- To fund grants prior to reimbursement by issuing grant anticipation notes (GANS).
- To fund Capital project costs incurred prior to selling permanent debt by issuing bond anticipation notes (BANS).
- To fund current project costs and other approved expenditures incurred, that are anticipated to be reimbursed by the Commonwealth, and through the issuance of State Aid anticipation notes (SAANS).

Short-term loans are general obligations of the Town and maturity dates are governed by statute. Interest expenditures and expenses for short-term borrowings are accounted for in the general fund and the sewer enterprise fund respectively.

The following is a summary of changes in short-term debt for the year ended June 30, 2020:

Type	Purpose	Rate (%)	Due Date	Balance at June 30, 2019	Renewed/ Issued	Retired/ Redeemed	Balance at June 30, 2020
<u>Governmental Funds</u>							
BAN	Sidewalks	2.50	12/11/2019	\$ 461,538	\$ -	\$ (461,538)	\$ -
BAN	Various Projects	2.24	12/11/2019	2,500,000	-	(2,500,000)	-
BAN	Various Projects	1.74	12/11/2020	-	475,000	-	475,000
	Total Governmental Funds			<u>\$ 2,961,538</u>	<u>\$ 475,000</u>	<u>\$ (2,961,538)</u>	<u>\$ 475,000</u>
<u>Sewer Enterprise Fund</u>							
BAN	Interim Loan	0.00	10/24/2019	<u>\$ 4,024,645</u>	<u>\$ -</u>	<u>\$ (4,024,645)</u>	<u>\$ -</u>

NOTE 9 – LONG-TERM DEBT

The Town is subject to a dual-level, general debt limit: the normal debt limit and the double debt limit. Such limits are equal to 5% and 10%, respectively, of the valuation of taxable property in the Town as last equalized by the Commonwealth's Department of Revenue. Debt may be authorized up to the normal debt limit without state approval. Authorizations under the double debt limit however require the approval of the Commonwealth's Emergency Finance Board. Additionally, there are many categories of general long-term debt which are exempt from the debt limit but are subject to other limitations.

TOWN OF HOPEDALE, MASSACHUSETTS
NOTES TO BASIC FINANCIAL STATEMENTS
JUNE 30, 2020

The following is a summary of the changes in long-term debt for the year ended June 30, 2020:

Bonds and Notes Payable Schedule -Governmental Funds

Project	Interest Rate (%)	Outstanding at June 30, 2019	Issued	Redeemed	Outstanding at June 30, 2020
High School Refunding	4.45%	\$ 715,211	\$ -	\$ 715,211	\$ -
Memorial School	0.99%	59,000	-	59,000	-
Fire Station	3.94%	375,000	-	125,000	250,000
Stormwater Management	2.00%	149,201	-	20,057	129,144
Memorial School Design	2.45%	130,000	-	10,000	120,000
Sidewalks	2.00 - 5.00%	-	423,076	-	423,076
Roadway Improvements	2.00 - 5.00%	-	975,924	-	975,924
Fire Vehicle	2.00 - 5.00%	-	347,000	-	347,000
Highway Vehicle	2.00 - 5.00%	-	445,000	-	445,000
Library Building Repairs	2.00 - 5.00%	-	139,000	-	139,000
Total Bonds Payable		\$ 1,428,412	\$ 2,330,000	\$ 929,268	\$ 2,829,144
Add: Unamortized Bond Premium		-	226,811	-	226,811
Total Bonds Payable Net		\$ 1,428,412	\$ 2,556,811	\$ 929,268	\$ 3,055,955

The annual debt service requirements for principal and interest for Governmental bonds and notes outstanding at June 30, 2020 are as follows:

Fiscal Year	Principal	Interest	Total
2021	\$ 310,462	\$ 149,862	\$ 460,324
2022	330,876	91,658	422,534
2023	211,297	77,023	288,320
2024	211,728	67,380	279,108
2025	217,167	57,591	274,758
2026-2030	1,017,614	147,924	1,165,538
2031-2034	530,000	16,200	546,200
Total	\$ 2,829,144	\$ 607,638	\$ 3,436,782

TOWN OF HOPEDALE, MASSACHUSETTS
NOTES TO BASIC FINANCIAL STATEMENTS
JUNE 30, 2020

Bonds and Notes Payable Schedule - Water and Sewer Enterprise Funds

Project	Interest Rate (%)	Outstanding at June 30, 2019	Issued	Redeemed	Outstanding at June 30, 2020
Sewer Refunding	0.99%	\$ 30,237	\$ -	\$ 30,237	\$ -
Sewer Refunding	0.99%	30,552	-	30,552	-
Sewer	4.03%	850,000	-	850,000	-
Sewer Refunding	0.00%	-	675,000	-	675,000
Sewer - MWPAT	2.00%	-	5,427,318	-	5,427,318
Total Sewer		<u>910,789</u>	<u>6,102,318</u>	<u>910,789</u>	<u>6,102,318</u>
Water - MWPAT Refunding	4.86%	205,597	-	47,813	157,784
Water	3.94%	30,000	-	10,000	20,000
Water - MWPAT	0.00%	61,482	-	8,783	52,699
Water - Water Treatment Plant	2.51%	3,246,000	-	200,000	3,046,000
Water - Water Treatment Plant	2.51%	244,000	-	15,000	229,000
Total Water		<u>3,787,079</u>	<u>-</u>	<u>281,596</u>	<u>3,505,483</u>
Total		<u>\$ 4,697,868</u>	<u>\$ 6,102,318</u>	<u>\$ 1,192,385</u>	<u>\$ 9,607,801</u>

The annual debt service requirements for principal and interest for water and sewer enterprise funds bonds and notes outstanding at June 30, 2020 are as follows:

Fiscal Year	Principal	Interest	Total
2021	\$ 570,917	\$ 241,041	\$ 811,958
2022	600,690	212,079	812,769
2023	605,565	195,867	801,432
2024	562,952	181,069	744,021
2025	583,040	167,072	750,112
2026-2030	3,035,376	605,198	3,640,574
2031-2035	2,066,460	138,324	2,204,784
2036-2040	<u>1,582,801</u>	<u>-</u>	<u>1,582,801</u>
Total	<u>\$ 9,607,801</u>	<u>\$ 1,740,650</u>	<u>\$ 11,348,451</u>

TOWN OF HOPEDALE, MASSACHUSETTS
NOTES TO BASIC FINANCIAL STATEMENTS
JUNE 30, 2020

Loans Authorized and Unissued

As of June 30, 2020, the Town has loans authorized and unissued as follows:

Description	Date Authorized	Amount
Septic Betterments	5/17/2011	\$ 200,000
School Roof	11/19/2013	269,617
Waste Water Treatment Improvements	5/16/2015	752,682
Freedom Street Bridge	3/9/2016	76,924
Library Building Repairs	6/19/2018	11,000
School Bond	6/19/2018	225,000
Departmental Equipment	6/19/2018	383,000
Road Construction	6/19/2018	124,076
Stormwater	11/6/2019	100,000
 Total		 <u>\$ 2,142,299</u>

Changes in Long-term Liabilities

The following is a summary of changes in long-term liabilities for the year ended June 30, 2020:

Governmental Activities:	Beginning Balance	Additions	Reductions	Ending Balance	Current Portion
Bonds and notes payable	\$ 1,428,412	\$ 2,330,000	\$ (929,268)	\$ 2,829,144	\$ 310,462
Add: Unamortized premiums	-	226,811	-	226,811	53,575
Total Bond Payable	1,428,412	2,556,811	(929,268)	3,055,955	364,037
Compensated Absences	799,846	-	(22,770)	777,076	51,714
Capital leases payable	173,949	-	(81,204)	92,745	45,110
Net pension liability	14,400,430	-	(394,042)	14,006,388	-
Postemployment Benefits	42,871,796	1,801,058	-	44,672,854	-
 Total governmental activities long-term liabilities	 <u>\$ 59,674,433</u>	 <u>\$ 4,357,869</u>	 <u>\$ (1,427,284)</u>	 <u>\$ 62,605,018</u>	 <u>\$ 460,861</u>
 Business-Type Activities:	 Beginning Balance	 Additions	 Reductions	 Ending Balance	 Current Portion
Bonds and notes payable	\$ 4,697,868	\$ 6,102,318	\$ (1,192,385)	\$ 9,607,801	\$ 570,917
Compensated Absences	160,509	-	(17,301)	143,208	24,418
Net pension liability	445,374	-	(12,186)	433,188	-
Postemployment Benefits	1,031,284	87,130	-	1,118,414	-
 Total business-type activities long-term liabilities	 <u>\$ 6,335,035</u>	 <u>\$ 6,189,448</u>	 <u>\$ (1,221,872)</u>	 <u>\$ 11,302,611</u>	 <u>\$ 595,335</u>

**TOWN OF HOPEDALE, MASSACHUSETTS
NOTES TO BASIC FINANCIAL STATEMENTS
JUNE 30, 2020**

The governmental activities long-term liabilities are generally liquidated by the general fund.

Massachusetts School Building Authority Reimbursements

Chapter 645 of the Act of 1948 as amended (“Chapter 645”) created a statewide school building assistance program. Pursuant to this program, Cities and Towns issued bonds for eligible school building projects and were reimbursed over a period of years by the Commonwealth according to a statutory percentage for such City or Town.

Legislation enacted as part of the Commonwealth’s Fiscal 2001 budget repealed 645 and created a new school building assistance program codified as Chapter 70B of the Massachusetts General Laws. Among other changes, the new program includes grants for alternatives to construction and calculates grants for each project based on a number of factors. The new legislation does not affect the reimbursement percentages for bonds previously issued under Chapter 645, and the grants for certain “grandfathered” projects will be based on the statutory percentages provided for in Chapter 645.

The Town has been approved for 67% percent state school construction grants through the Massachusetts School Building Authority (MSBA) to cover eligible project costs, including debt service associated with the financing of these projects, subject to annual appropriation by the state legislature. The Town received \$772,236 from scheduled annual payments in FY 2020 from the MSBA for completed school construction projects.

Overlapping Debt

The Town pays assessments under formulas which include debt service payments to other governmental agencies providing services to the Town, (commonly referred to as overlapping debt). The following summary sets forth the long-term debt of such governmental agencies and the estimated share being financed by the Town as of June 30, 2020:

<u>Agency</u>	<u>Total Long- Term Debt Outstanding</u>	<u>Town's Estimated Share</u>	<u>Town's Indirect Debt</u>
Blackstone Valley Regional Vocational Technical High School			
Bonds	<u>\$ 1,885,000</u>	<u>2.1%</u>	<u>\$ 39,585</u>

**TOWN OF HOPEDALE, MASSACHUSETTS
NOTES TO BASIC FINANCIAL STATEMENTS
JUNE 30, 2020**

NOTE 10 – GOVERNMENTAL FUND BALANCE CLASSIFICATIONS

The Town has classified its governmental fund balances with the following hierarchy.

	General Fund	Nonmajor Governmental Funds	Total
Fund Balances			
Nonspendable			
Permanent Fund Principal	\$ -	\$ 57,763	\$ 57,763
Restricted For:			
General Government	-	92,490	92,490
Public Safety	-	726,951	726,951
Education	-	1,699,467	1,699,467
Public Works	-	5,457	5,457
Human Services	-	11,160	11,160
Culture & Recreation	-	241,358	241,358
Expendable Trust Funds	-	22,741	22,741
	-	2,799,624	2,799,624
Committed To:			
Continuing Appropriations			
General Government	47,931	-	47,931
Public Works	23,358	-	23,358
Culture & Recreation	8,223	-	8,223
	79,512	-	79,512
Assigned To:			
Encumbered For:			
General Government	1,415	-	1,415
Public Safety	88,556	-	88,556
Education	25,799	-	25,799
Public Works	165	-	165
Human Services	34,801	-	34,801
Culture & Recreation	3,500	-	3,500
Employee Benefits	246,720	-	246,720
Subsequent Years Expenditures	373,000	-	373,000
Reserved for Petty Cash	220	-	220
Capital Improvements Stabilization Fund	7,468	-	7,468
	781,644	-	781,644
Unassigned			
General Fund	1,345,685	-	1,345,685
General Stabilization	659,807	-	659,807
Non Major Governmental	-	(100)	(100)
Capital Projects			
General Government	-	(14,811)	(14,811)
Public Safety	-	(92,266)	(92,266)
Public Works	-	(99,819)	(99,819)
Education	-	(192,311)	(192,311)
	2,005,492	(399,307)	1,606,185
Total Governmental Fund Balances	\$ 2,866,648	\$ 2,458,080	\$ 5,324,728

TOWN OF HOPEDALE, MASSACHUSETTS
NOTES TO BASIC FINANCIAL STATEMENTS
JUNE 30, 2020

NOTE 11 – STABILIZATION FUNDS

The Town has established two funds where the Town has set aside amounts for emergency and capital needs. These funds consist of the following;

- *The General Stabilization Fund* is used to account for any appropriation, as approved by a 2/3 vote at the annual or special town meeting for additions or reductions to the fund. Any interest shall be added to and become part of the fund. The General Stabilization fund balance is \$659,807 as of June 30, 2020. The fund was established under chapter 40, sub-section 5B of the Massachusetts General Law.

- *The Capital Improvements Stabilization Fund* is used to account for appropriations funding the acquisition, repair, replacement, extension, reconstruction, enlarging and/or additions to capital equipment, vehicles, and apparatus of the Town and pay notes, bonds, or certificates of indebtedness issued to pay for the cost of such acquisition, repair, replacement, extension, reconstruction, enlarging and additions. The Capital Improvements Stabilization fund balance is \$7,468 as of June 30, 2020. The Town may appropriate into and out of the fund at Annual or Special Town Meeting by 2/3 vote. This fund was established under Chapter 40 sub-section 5B of MGL.

NOTE 12 – RISK FINANCING

The Town is exposed to various risks of loss related to torts; theft of, damage to or destruction of assets; errors and omissions; injuries to employees; employee's health and life; and natural disasters.

Buildings are fully insured against fire, theft, and natural disaster to the extent that losses exceed \$1,000 per incident. The fully insurable value of Town buildings is \$66,282,478.

The Town is insured for general liability; however, Chapter 258 of the Massachusetts General Laws limits the Town's liability to a maximum of \$100,000 per claim in all matters except in actions relating to federal civil rights, eminent domain and breach of contract. Such claims are charged to the general fund. There were no such claims in 2020.

The Town changed to MIIA as of 7/1/2019. There are 3 plans offered to Active Employees HMO Blue New England, HMO Blue New England Select, & Blue Care Elect Preferred (PPO). There are 2 plans for Retiree's Medex 2 & Manage Blue for Seniors. There are 203 active employees and 103 Retirees. The Town's contribution rate is 80% for all active and retiree plans.

The Town purchases accident policies for uniformed police and fire personnel. The limits vary depending on the nature of the injury and the personnel involved. Accident claims paid to uniformed police and fire personnel was not material in fiscal year 2020.

TOWN OF HOPEDALE, MASSACHUSETTS
NOTES TO BASIC FINANCIAL STATEMENTS
JUNE 30, 2020

NOTE 13 - POSTEMPLOYMENT BENEFITS OTHER THAN PENSIONS

The GASB Standards for *Accounting and Financial Reporting for Postemployment Benefits Other Than Pensions*, requires the following disclosures in the financial statements related to the retiree medical, dental, and life insurance benefits:

Plan Description. The Town of Hopedale's Other Postemployment Benefits Plan ("the plan") is a single-employer, defined benefit, healthcare plan administered by the Town of Hopedale. The plan provides medical and life insurance benefits to eligible retirees and their spouses. Town meeting vote is the authority to establish and amend benefit provisions to the Town. The Town has accepted various sections of Massachusetts General laws Chapter 32B to provide 20% - 35% of the premium cost of retirees' health and 50% for life insurance costs.

Funding Policy. The contribution requirements of plan members and the Town are established and may be amended by Town ordinances. The required contribution is based on projected pay-as-you-go financing requirements. For fiscal year 2020, total Town premiums plus implicit costs for the retiree medical program are \$975,073.

The Commonwealth of Massachusetts passed special legislation that has allowed the Town to establish a postemployment benefit trust fund and to enable the Town to begin pre-funding its other postemployment benefit (OPEB) liabilities.

GASB Statement #75 – OPEB Employer Financial Reporting

Summary of Significant Accounting Policies – For purposes of measuring the net OPEB liability, deferred outflows of resources and deferred inflows of resources related to OPEB and OPEB expenses, information about the fiduciary net position of the Plan and additions to/deductions from the Plan's fiduciary net position have been determined on the same basis as they are reported by the Plan. For this purpose, the Plan recognizes benefit payments when due and payable in accordance with the benefit terms.

Measurement Date - GASB #75 requires the net OPEB liability to be measured as of a date no earlier than the end of the employer's prior fiscal year and no later than the end of the employer's current fiscal year, consistently applied from period to period. Accordingly, the net OPEB liability was measured as of June 30, 2020 and the total OPEB liability used to calculate the net OPEB liability was determined by an actuarial valuation as of July 1, 2018.

Plan Membership – The following table represents the Plan's membership as July 1, 2018:

Active Employees	236
Inactive employees or beneficiaries currently receiving benefits	<u>137</u>
Total	<u><u>373</u></u>

TOWN OF HOPEDALE, MASSACHUSETTS
NOTES TO BASIC FINANCIAL STATEMENTS
JUNE 30, 2020

Components of OPEB Liability – The following table represents the components of the Plan’s OPEB liability as of June 30, 2020:

Total OPEB Liability	\$ 45,791,268
Less: OPEB plan's fiduciary net position	<u>-</u>
Net OPEB Liability	<u><u>\$ 45,791,268</u></u>

The OPEB plan's fiduciary net position as a percentage of the total OPEB liability	0.00%
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**TOWN OF HOPEDALE, MASSACHUSETTS
NOTES TO BASIC FINANCIAL STATEMENTS
JUNE 30, 2020**

Significant Actuarial Methods and Assumptions – The plan’s total OPEB liability and actuarial valuation was determined using the following actuarial assumptions, applied to all periods included in the measurement, unless otherwise specified, that was updated to June 30, 2020 to be in accordance with GASB Statement #75.

Valuation Date:	Actuarially Determined Contribution was calculated as of July 1, 2018.
Actuarial Cost Method:	Individual Entry Age Normal
Asset-Valuation Method:	Market value of assets as of the measurement date, June 30, 2020
Investment Rate of Return	N/A
Municipal Bond Rate:	2.66% as of June 30, 2020 (source: S&P Municipal Bond 20 year high grade index - SAPIHG)
Single Equivalent Discount Rate:	2.75% net of OPEB plan investment expense, including inflation.
Inflation:	2.50% as of June 30, 2020 and for future periods
Salary Increases:	3.00% annually as of June 30, 2020 and for future periods
Cost of Living Adjustment	Not Applicable
Pre-Retirement Mortality:	General: RP-2014 Mortality Table for Blue Collar Employees projected generationally with scale MP-2016 for males and females, set forward one year for females. Teachers: RP-2014 Mortality Table for White Collar Employees projected generationally with scale MP-2016 for males and females.
Post-Retirement Mortality:	General: RP-2014 Mortality Table for Blue Collar Healthy Annuitants projected generationally with scale MP-2016 for males and females, set forward one year for females. Teachers: RP-2014 Mortality Table for White Collar Healthy Annuitants projected generationally with scale MP-2016 for males and females.
Disabled Mortality:	General: RP-2014 Mortality Table for Blue Collar Healthy Annuitants projected generationally with scale MP-2016 for males and females, set forward 1 year. Teachers: RP-2014 Mortality Table for White Collar Healthy Annuitants projected generationally with scale MP-2016 for males and females.

**TOWN OF HOPEDALE, MASSACHUSETTS
NOTES TO BASIC FINANCIAL STATEMENTS
JUNE 30, 2020**

Investment Policy

The Town has not established a formal investment policy. The chart below shows the development of the long term real rate of return on assets that could be used for funded periods if the investment policy were adopted.

<u>Asset Class</u>	<u>Target Allocation</u>	<u>Long-Term Expected Real Rate of Return</u>
Domestic equity - large cap	20.00%	4.90%
Domestic equity - small/mid cap	10.00%	5.40%
International equity - developed market	15.00%	5.32%
International equity - emerging market	10.00%	6.26%
Domestic fixed income	30.00%	1.40%
International fixed income	10.00%	1.30%
Alternatives	5.00%	6.32%
Real Estate	0.00%	6.25%
Cash and Cash Equivalentents	0.00%	0.00%
Total	100.00%	

Discount Rate – The discount rate used to measure the total OPEB liability was 2.75% as of June 30, 2020. The projection of cash flows used to determine the discount rate assumed that contributions will be made in accordance with the Plan’s funding policy.

TOWN OF HOPEDALE, MASSACHUSETTS
NOTES TO BASIC FINANCIAL STATEMENTS
JUNE 30, 2020

Changes in the Net OPEB Liability

	Increase (Decrease)		
	Total OPEB Liability (a)	Plan Fiduciary Net Position (b)	Net OPEB Liability (a) - (b)
Balance at June 30, 2019	\$ 43,903,080	\$ -	\$ 43,903,080
Charges for the year			
Service cost	1,627,241	-	1,627,241
Interest on Total OPEB Liability, Service Cost and Benefit Payments	1,238,768	-	1,238,768
Differences between actual and expected experience	(2,748)	-	(2,748)
Employer Contributions to Trust	-	975,073	(975,073)
Benefit payments withdrawn from trust	-	(975,073)	975,073
Benefit payments including implicit cost	(975,073)	-	(975,073)
Net Change	1,888,188	-	1,888,188
Balance at June 30, 2020	<u>\$ 45,791,268</u>	<u>\$ -</u>	<u>\$ 45,791,268</u>

Changes in the Net OPEB Liability

Sensitivity of the net OPEB liability and Service Cost to changes in the discount rate – The following table presents the Plan’s net OPEB liability, and Service Cost calculated using the discount rate of 2.75% as well as what the net OPEB liability and service costs would be if it were calculated using a discount rate that is 1 percentage- point lower (1.75%) or 1 percentage-point higher (3.75%) than the current rate.

	1% Decrease (1.75%)	Current Discount Rate (2.75%)	1% Increase (3.75%)
Net OPEB liability	\$ 55,304,858	\$ 45,791,268	\$ 38,471,663
Service Cost	\$ 2,209,080	\$ 1,627,241	\$ 1,214,928

TOWN OF HOPEDALE, MASSACHUSETTS
NOTES TO BASIC FINANCIAL STATEMENTS
JUNE 30, 2020

Sensitivity of the net OPEB liability and Service Cost to changes in the healthcare trend – The following table presents the net other postemployment benefit liability and service cost calculated using the current healthcare trend rate of 4.5% as well as what the net OPEB liability and service cost would be if it were calculated using a healthcare trend rate that is 1 percentage-point lower or 1 percentage-point higher than the current rate.

	1% Decrease (3.50%)	Current Trend (4.50%)	1% Increase (5.50%)
Net OPEB liability	\$ 37,711,533	\$ 45,791,268	\$ 56,571,072
Service Cost	\$ 1,217,449	\$ 1,627,241	\$ 2,218,728

Deferred Outflows/Inflows of Resources

At June 30, 2020 the Town reported deferred outflows and inflows of resources related to OPEB of \$4,124,395 and \$1,319,469 respectively.

The balances of deferred outflows and inflows as June 30, 2020 consist of the following:

<u>Deferred Category</u>	<u>Deferred Outflows of Resources</u>	<u>Deferred Inflows of Resources</u>	<u>Total</u>
Differences between actual and expected experience	\$ -	\$ (1,319,469)	\$ (1,319,469)
Changes in Assumptions	4,124,395	-	4,124,395
Total Deferred Outflows (Inflows) of Resources	<u>\$ 4,124,395</u>	<u>\$ (1,319,469)</u>	<u>\$ 2,804,926</u>

**TOWN OF HOPEDALE, MASSACHUSETTS
NOTES TO BASIC FINANCIAL STATEMENTS
JUNE 30, 2020**

The Town's net deferred outflows/(inflows) of resources related to other postemployment benefits will be recognized in future years other postemployment benefits as follows:

Year ended June 30	Amount
2021	\$ 617,919
2022	617,919
2023	617,919
2024	617,919
2025	333,478
Thereafter	(228)
Total Deferred Outflows/(Inflows) Recognized in Future Years	\$ 2,804,926

Changes of Assumption – None

Changes in Plan Provisions - None

NOTE 14 – PENSION PLANS

A. Plan Descriptions

The Town is a member of the Worcester Regional Retirement System (The System), a cost-sharing multiple-employer, contributory defined benefit pension plan covering eligible employees of the 99 member units deemed eligible by the system. Chapter 32 of the Massachusetts General Law assigns authority to establish and amend benefit provisions of the system. Substantially all employees are members of the system except for public school teachers and certain school administrators.

The System issues a publically available audited financial report that may be obtained by contacting the system at 23 Midstate Drive, Suite 106 Midstate Office Park, Auburn, Massachusetts 01501. The report can also be obtained online at <http://worcesterregionalretirement.org/>.

The Town is a member of the Massachusetts Teachers' Retirement System (MTRS), a cost-sharing multi-employer defined benefit plan. MTRS is managed by the Commonwealth of Massachusetts (Commonwealth) on behalf of municipal teachers and municipal teacher retirees. The Commonwealth is a nonemployer contributor and is responsible for 100% of the contributions and future benefit requirements of the MTRS. The MTRS covers certified teachers in cities (except Boston), towns, regional school districts, charter schools, educational collaboratives, and Quincy College. The MTRS is part of the Commonwealth's reporting entity and the audited financial report may be obtained by visiting <http://www.mass.gov/osc/publications-and-reports/financial-reports/>. The MTRS report may also be obtained by contacting MTRS at One Charles Park, Cambridge, Massachusetts 02142-1206.

TOWN OF HOPEDALE, MASSACHUSETTS
NOTES TO BASIC FINANCIAL STATEMENTS
JUNE 30, 2020

Special Funding Situation

The Commonwealth is a nonemployer contributor and is required by statute to make 100% of all actuarially determined employer contributions on behalf of the Town to the MTRS. Therefore, the Town is considered to be in a special funding situation as defined by GASB Statement No.68, *Accounting and Financial Reporting for Pensions* and the Commonwealth is a nonemployer contributor in MTRS. Since the Town does not contribute directly to MTRS, there is no net pension liability to recognize. The total of the Commonwealth provided contributions have been allocated based on each employer's covered payroll to the total covered payroll of employers in MTRS as of the measurement date of June 30, 2019. The Town's portion of the collective pension expense, contributed by the Commonwealth, of \$3,660,224 is reported in the general fund as intergovernmental revenue and pension expense in the current fiscal year. The portion of the Commonwealth's collective net pension liability associated with the Town is \$30,183,263 as of the measurement date.

The "System" and the MTRS are contributory defined benefit plans and membership in both the "System" and the MTRS is mandatory upon commencement of employment for all permanent, full-time employees.

B. Benefits Provided

The System and MTRS provide retirement, disability, survivor and death benefits to plan members and beneficiaries. Massachusetts Contributory Retirement System benefits are with certain minor exceptions, uniform from system to system. For employees who become members prior to April 2, 2012, the annual amount of retirement allowance is based on the member's final three-year average salary multiplied by (1) the number of years and full months of creditable service at the time of retirement and (2) a percentage based on age at retirement in accordance with a schedule provided by state law. Assuming normal retirement at age 65, this percentage is 2.5%, which is reduced for individuals who retire prior to age 65 to reflect the longer pay out period. The employees final three-year average salary is defined as the greater of the highest consecutive three-year average annual rate of regular compensation and the average annual rate of regular compensation received during the last three years of creditable service prior to retirement. For employees who become members on or after April 2, 2012, the annual amount of the retirement allowance is based on the member's final five-year average salary multiplied by (1) the number of years and full months of creditable service at the time of retirement and (2) a percentage based on age at retirement in accordance with a schedule provided by state law. Assuming normal retirement at age 67, this percentage is 2.5%. An employee's final five-year average salary is defined as the greater of the highest consecutive five-year average annual rate of regular compensation and the average annual rate of regular compensation received during the last five-years of creditable service prior to retirement. Employees become vested after ten years of creditable service.

Employees who become permanently and totally disabled for further duty may be eligible to receive a disability retirement allowance. The amount of benefits to be received depends on several factors, including whether or not disability is work related, the employees' age, years of creditable service, level of compensation, and veterans' status.

Employees who resign from service and who are not eligible to receive a retirement allowance or are under the age of 55 are entitled to request a refund of their accumulated total deductions. Survivor benefits are extended to eligible beneficiaries of members whose death occurs prior to or following retirement.

TOWN OF HOPEDALE, MASSACHUSETTS
NOTES TO BASIC FINANCIAL STATEMENTS
JUNE 30, 2020

Cost-of living adjustments granted between 1981 and 1997, and any increase in other benefits imposed by the Commonwealth's state law during those years are borne by the Commonwealth and are deposited in to the pension fund. Cost-of-living adjustments granted after 1997 must be approved by the system and all costs are borne by the system.

C. Contributions

Worcester Regional Retirement System

Chapter 32 of MGL governs the contributions of plan members and member employees. Active plan members are required to contribute to the system at rates ranging from 5 to 9% of their gross regular compensation. Members joining the system after December 31, 1978 must contribute an additional 2% of regular compensation in excess of \$30,000. The rate is keyed to the date upon which an employee's membership commences. The member units are required to pay into the system, a legislatively mandated actuarial determined contribution that is apportioned among the employers based on active current payroll. The Town's proportionate share of the required contribution equaled its actual contribution for the year ended December 31, 2019 which was \$987,717 and 18.87% of covered payroll, actuarially determined as an amount that when combined with plan member contributions, is expected to finance the costs of benefits earned by plan members during the year, with an additional amount to finance any unfunded accrued liability.

D. Pension Liabilities, Pension Expense, Deferred Outflows of Resources, and Deferred Inflows of Resources Related to Pensions

Pension Liabilities

At June 30, 2020 the Town reported a liability of \$14,439,576 for its proportionate share of the net pension liability. The net pension liability was measured as of December 31, 2019 and the total pension liability used to calculate the net pension liability was determined by an actuarial valuation as of January 1, 2018. Accordingly, updated procedures were used to roll forward the total pension liability to the measurement date. The Town's proportion of the net pension liability was based on a projection of the Town's long-term share of contributions to the pension plan relative to the projected contributions of all participating members actuarially determined. At December 31, 2019, the Town's proportion was 1.62%.

Pension Expense and Deferred Outflows/Inflows of Resources

For the year ended June 30, 2020 the Town recognized pension expense of \$1,653,332. At June 30, 2020 the Town reported deferred outflows and inflows of resources related to pensions of \$1,218,563 and \$843,431 respectively.

TOWN OF HOPEDALE, MASSACHUSETTS
NOTES TO BASIC FINANCIAL STATEMENTS
JUNE 30, 2020

The balances of deferred outflows and inflows as June 30, 2020 consist of the following:

Deferred Category	Deferred Outflows of Resources	Deferred Inflows of Resources	Total
Net difference between expected and actual experience	\$ 42,402	\$ (86,513)	\$ (44,111)
Assumptions Changes	807,058	-	807,058
Net difference between projected and actual investment earnings	-	(396,606)	(396,606)
Change in allocated proportion	369,103	(360,312)	8,791
Total Deferred Outflows (Inflows) of Resources	<u>\$ 1,218,563</u>	<u>\$ (843,431)</u>	<u>\$ 375,132</u>

The Town's net deferred outflows/inflows of resources related to pensions will be recognized in future years are as follows:

Year ended June 30	Amount
2020	\$ 156,413
2021	229,453
2022	152,568
2023	(187,171)
2024	23,869
Total Deferred Outflows/(Inflows) of Resources Recognized in Future Years	<u>\$ 375,132</u>

TOWN OF HOPEDALE, MASSACHUSETTS
NOTES TO BASIC FINANCIAL STATEMENTS
JUNE 30, 2020

E. Actuarial assumptions

The total pension liability in the January 1, 2018 actuarial valuation was determined using the following actuarial assumptions, applied to all periods included in the measurement that was updated to December 31, 2019.

Valuation date	January 1, 2018
Actuarial cost method	Entry age normal
Amortization method	Payment increases 4% per year
Asset valuation method	market value
Inflation rate	2.4% per year
Salary increases	Group 1: 4.25% - 6% based on service Group 4: 4.75% - 7% based on service
Mortality rates:	Based on the RP-2000 mortality table (base year 2009) with full generational mortality improvement using scale BB. For disabled lives, the mortality rates were based on the RP – 2000 mortality table (base year 2012) with full generational mortality improvement using scale BB.
Investment rate of return	7.65%, net of pension plan investment expense, including inflation

TOWN OF HOPEDALE, MASSACHUSETTS
NOTES TO BASIC FINANCIAL STATEMENTS
JUNE 30, 2020

F. Long-Term Expected Rate of Return

The long-term expected rate of return on pension plan investments was determined using a building block method in which best-estimate ranges of expected future rates of return (expected returns, net of pension plan investment expense and inflation) are developed for each major asset class. These ranges are combined to produce the long-term expected rate of return by weighting the expected future rates of return by the target asset allocation percentage and by adding expected inflation. Best estimates of arithmetic real rates of return for each major asset class included in the pension plan's target asset allocation as of December 31, 2019 are summarized in the following table:

<u>Asset Class</u>	<u>Target Allocation</u>	<u>Long-Term Expected Real Rate of Return</u>
Global equity	39%	4.68%
Fixed income	23%	1.90%
Private equity	13%	8.50%
Real estate	10%	3.70%
Timber - natural resources	4%	4.30%
Portfolio completion strategies	11%	3.40%
Total	<u>100%</u>	

For the year ended December 31, 2019 the System's annual money-weighted rate of return on pension plan investments net of pension plan investment expense was 16.55%. The money-weighted rate of return expresses investment performance, net of investment expense, adjusted for the changing amounts actually invested.

G. Discount Rate

The discount rate used to measure the total pension liability as of December 31, 2019 was 7.65%. The projection of cash flows used to determine the discount rate assumed that plan member contributions will be made at the current contribution rates and that member employer contributions will be made in accordance with sections 22D and 22F of Chapter 32 of Massachusetts General Laws. Based on those assumptions, the pension plan's fiduciary net position was projected to be available to make all projected future benefit payments of current plan members. Therefore, the long-term expected rate of return on pension plan investments was applied to all periods of projected benefit payments to determine the total pension liability.

**TOWN OF HOPEDALE, MASSACHUSETTS
NOTES TO BASIC FINANCIAL STATEMENTS
JUNE 30, 2020**

H. Sensitivity of the net pension liability to changes in the discount rate

The following presents the net pension liability of the system, as of December 31, 2019 calculated using the discount rate of 7.65%, as well as what the system’s net pension liability would be if it were calculated using a discount rate that is 1 percentage point lower (6.65%) or 1 percentage point higher (8.65%) than the current rate:

	1% Decrease (6.65%)	Current Discount Rate (7.65%)	1% Increase (8.65%)
The Towns proportionate share of the net pension liability	<u>\$ 17,620,043</u>	<u>\$ 14,439,576</u>	<u>\$ 11,753,763</u>

Detailed information about the pension plan’s fiduciary net position is available in a separately issued Worcester Regional Retirement System financial report.

NOTE 15 – COMMITMENTS AND CONTINGENCIES

The Town participates in a number of federal award programs. However the Town is not subject to the provisions of the Single Audit Act Amendments of 1996, since the Town did not expend more than \$750,000 of federal awards during the period ended June 30, 2020. These programs may still be subject to financial and compliance audits. Accordingly, the amount of expenditures which may be disallowed by the granting agencies cannot be determined at this time, although it is believed the amount, if any, would not be material.

Various legal actions and claims are pending. Litigation is subject to many uncertainties, and the outcome of individual litigated matters is not always predictable. Although the amount of liability, if any, at June 30, 2020, cannot be ascertained, management believes any resulting liability should not materially affect the financial position at June 30, 2020.

NOTE 16 – COVID-19

On March 10, 2020, the Massachusetts Governor declared a state of emergency in response to the coronavirus outbreak. The World Health Organization officially declared the novel Coronavirus (COVID-19) a pandemic the following day. In an attempt to slow the spread of COVID-19, governments issued various stay at home orders that caused global economic shutdowns and substantial financial market impact. Starting in March 2020, the Governor continued to issue orders allowing governments to operate and carry out essential functions safely. These included modifying the state’s Open Meeting Law, issuing a stay-at-home order, and introducing a phased approach to reopening State businesses. The Town is considered an essential business and although it closed its doors to the public, departments remained operational and employees continued to perform their daily duties in-person or remotely.

TOWN OF HOPEDALE, MASSACHUSETTS
NOTES TO BASIC FINANCIAL STATEMENTS
JUNE 30, 2020

In Fiscal Year 2021 the Town has incurred unanticipated costs specifically related to the pandemic. On March 27, 2020 the United States Federal Government established the Coronavirus Aid, Relief and Economic Security (CARES) Act in response to the economic downfall caused by the COVID-19 pandemic. This Act requires that the payment of funds be used only to cover expenses that; are necessary expenditures incurred due to the public health emergency with respect to COVID-19. The Commonwealth and communities throughout the Commonwealth were awarded a portion of the federal funding. In addition to the funding from the CARES Act, there are several other federal and state grants available to help offset these unanticipated costs.

The full extent of the financial impact cannot be determined as of the date of the financial statements.

NOTE 17 – IMPLEMENTATION OF NEW GASB PRONOUNCEMENTS

During fiscal year 2020, the following GASB pronouncements were implemented:

The GASB issued **Statement #84**, *Fiduciary Activities*, was implemented in 2020. Management’s current assessment is that this pronouncement did not have a significant impact on the Basic Financial Statements.

The GASB issued **Statement #90**, *Majority Equity Interests – an Amendment of GASB Statements No.14 and No.61*, was implemented in 2020. Management’s current assessment is that this pronouncement will not have a significant impact on the Basic Financial Statements.

The GASB issued **Statement #95**, *Postponement of the Effective Dates of Certain Authoritative Guidance*, was implemented in 2020. Management’s current assessment is that this pronouncement did not have a significant impact on the Basic Financial Statements.

The GASB issued **Statement #96**, *Subscription-Based Information Technology Arrangements*, was implemented in 2020. Management’s current assessment is that this pronouncement will not have a significant impact on the Basic Financial Statements.

Future GASB Pronouncements:

The GASB issued **Statement #87**, *Leases*, which is required to be implemented in 2021. Management’s current assessment is that this pronouncement will not have a significant impact on the Basic Financial Statements.

The GASB issued **Statement #89**, *Accounting for Interest Cost Incurred before the End of a Construction Period*, which is required to be implemented in 2021. Management’s current assessment is that this pronouncement will not have a significant impact on the Basic Financial Statements.

TOWN OF HOPEDALE, MASSACHUSETTS
NOTES TO BASIC FINANCIAL STATEMENTS
JUNE 30, 2020

The GASB issued **Statement #91**, *Conduit Debt Obligations* – which is required to be implemented for reporting periods beginning after December 15, 2020. Earlier application is encouraged. The primary objectives of this statement is to provide a single method of reporting conduit debt obligations by issuers and eliminate diversity in practice associated with (1) commitments extended by issuers, (2) arrangements associated with conduit debt obligations, and (3) related note disclosures. . Management’s current assessment is that this pronouncement will not have a significant impact on the Basic Financial Statements.

The GASB issued **Statement #92**, *Omnibus 2020*, which is required to be implemented in 2022. Management’s current assessment is that this pronouncement will not have a significant impact on the Basic Financial Statements.

The GASB issued **Statement #93**, *Replacement of Interbank Offered Rates*, which is required to be implemented in 2022. Management’s current assessment is that this pronouncement will not have a significant impact on the Basic Financial Statements.

The GASB issued **Statement #94**, *Public-Private and Public Partnerships and Availability Payment Arrangements*, which is required to be implemented in 2022. Management’s current assessment is that this pronouncement will not have a significant impact on the Basic Financial Statements.

The GASB issued **Statement #97**, *Certain Component Unit Criteria, and Accounting and Financial Reporting for Internal Revenue Service Code 457 Deferred Compensation Plans*, which is required to be implemented in 2022. Management’s current assessment is that this pronouncement will not have a significant impact on the Basic Financial Statements.

**TOWN OF HOPEDALE, MASSACHUSETTS
REQUIRED SUPPLEMENTARY INFORMATION
WORCESTER REGIONAL RETIREMENT SYSTEM
JUNE 30, 2020**

Schedule of the Town's Proportionate Share of the Net Pension Liability

	<u>December 31, 2019</u>	<u>December 31, 2018</u>	<u>December 31, 2017</u>	<u>December 31, 2016</u>	<u>December 31, 2015</u>	<u>December 31, 2014</u>
Town's proportion of the net pension liability	1.62%	1.64%	1.65%	1.54%	1.54%	1.76%
Town's proportionate share of the net pension liability	\$ 14,439,576	\$ 14,845,804	\$ 13,426,826	\$ 12,890,264	\$ 10,942,452	\$ 10,453,798
Town's covered-employee payroll	\$ 5,234,698	\$ 4,428,604	\$ 4,840,183	\$ 5,048,242	\$ 4,874,617	\$ 4,687,132
Town's proportionate share of the net pension liability as a percentage of it's covered-employee payroll	275.84%	335.23%	277.40%	255.34%	224.49%	223.03%
Plan fiduciary net position as a percentage of the total pension liability	47.36%	43.05%	46.40%	42.00%	44.52%	47.94%

Note: This schedule is intended to present information for 10 years. Until a 10 year trend is compiled, information is presented for those years for which the information is available.

See notes to Required Supplementary Information

**TOWN OF HOPEDALE, MASSACHUSETTS
REQUIRED SUPPLEMENTARY INFORMATION
WORCESTER REGIONAL RETIREMENT SYSTEM
JUNE 30, 2020**

SCHEDULE OF TOWN'S CONTRIBUTION

	<u>December 31, 2019</u>	<u>December 31, 2018</u>	<u>December 31, 2017</u>	<u>December 31, 2016</u>	<u>December 31, 2015</u>	<u>December 31, 2014</u>
Actuarially determined contribution	\$ 987,717	\$ 911,521	\$ 833,168	\$ 747,549	\$ 693,509	\$ 694,247
Contribution in relation to the actuarially determined contribution	<u>(987,717)</u>	<u>(911,521)</u>	<u>(833,168)</u>	<u>(747,549)</u>	<u>(693,509)</u>	<u>(694,247)</u>
Contribution deficiency (excess)	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>
Town's covered-employee payroll	\$ 5,234,698	\$ 4,428,604	\$ 4,840,183	\$ 5,048,242	\$ 4,874,617	\$ 4,687,132
Contribution as a percentage of covered - employee payroll	18.87%	20.58%	17.21%	14.81%	14.23%	14.81%

Note: This schedule is intended to present information for 10 years. Until a 10 year trend is compiled, information is presented for those years for which the information is available.

See notes to Required Supplementary Information

**TOWN OF HOPEDALE, MASSACHUSETTS
REQUIRED SUPPLEMENTARY INFORMATION
MASSACHUSETTS TEACHERS RETIREMENT SYSTEM
JUNE 30, 2020**

Schedule of the Commonwealth's Collective amounts of the Net Pension Liability

The Commonwealth of Massachusetts is a nonemployer contributor and is required by statute to make all actuarially determined employer contributions on behalf of the member employers which creates a special funding situation. Since the Town does not contribute directly to MTRS, there is no net pension liability to recognize. This schedule discloses the Commonwealth's 100% share of the collective net pension liability that is associated with the Town; the portion of the collective pension expense as both revenue and pension expense recognized by the Town; and the Plan's fiduciary net position as a percentage of total liability.

<u>Fiscal Year</u>	<u>Commonwealth's 100% Share of the Net Pension Liability Associated with the Town</u>	<u>Town's Expense and Revenue Recognized for the Commonwealth's Support</u>	<u>Plan Fiduciary Net Position as a Percentage of the Total Pension Liability</u>
2020	\$ 30,183,263	\$ 3,660,244	53.95%
2019	28,163,290	2,853,942	54.84%
2018	27,295,673	2,848,929	54.25%
2017	26,188,514	2,671,400	52.73%
2016	24,140,072	1,957,979	55.38%
2015	18,782,898	1,304,938	61.64%

Note: This schedule is intended to present information for 10 years. Until a 10-year trend is compiled, information is presented for those years for which information is available.

See notes to required supplementary information.

**TOWN OF HOPEDALE, MASSACHUSETTS
REQUIRED SUPPLEMENTARY INFORMATION
OTHER POSTEMPLOYMENT BENEFITS
JUNE 30, 2020**

Schedule of the Town's Net OPEB Liability and Related Ratios

	<u>June 30, 2020</u>	<u>June 30, 2019</u>	<u>June 30, 2018</u>
Total OPEB Liability			
Service Cost	\$ 1,627,241	\$ 1,532,390	\$ 1,336,155
Interest on total OPEB liability, service cost, and benefit payments	1,238,768	1,466,765	1,161,115
Changes of benefit terms	-	(3,065,683)	-
Differences between actual and expected experience	(2,748)	(1,897,377)	-
Changes of assumptions	-	5,941,309	-
Benefit Payments	(975,073)	(714,920)	(791,153)
Implicit cost amount	-	(176,414)	-
Net Change in total OPEB liability	<u>1,888,188</u>	<u>3,086,070</u>	<u>1,706,117</u>
Total OPEB liability-beginning	43,903,080	33,936,872	32,230,755
Prior period adjustment	-	6,880,138	-
	<u><u>45,791,268</u></u>	<u><u>43,903,080</u></u>	<u><u>33,936,872</u></u>
Plan fiduciary net position			
Contributions-employer	975,073	891,334	791,153
Benefit payments	<u>(975,073)</u>	<u>(891,334)</u>	<u>(791,153)</u>
Net change in plan fiduciary net position	-	-	-
Plan fiduciary net position - beginning	<u>-</u>	<u>-</u>	<u>-</u>
Plan fiduciary net position - ending (b)	<u><u>-</u></u>	<u><u>-</u></u>	<u><u>-</u></u>
Town's net OPEB liability-ending (a)-(b)	<u><u>\$ 45,791,268</u></u>	<u><u>\$ 43,903,080</u></u>	<u><u>\$ 33,936,872</u></u>
Plan fiduciary net position as a percentage of total OPEB liability	0.00%	0.00%	0.00%
Covered-employee payroll	14,853,229	14,420,611	13,628,053
Plan's net OPEB liability as a percentage of covered-employee payroll	308.29%	304.45%	249.00%

Note: This schedule is intended to present information for 10 years. Until a 10-year trend is compiled, information is presented for those years for which information is available

See notes to required supplementary information.

**TOWN OF HOPEDALE, MASSACHUSETTS
REQUIRED SUPPLEMENTARY INFORMATION
OTHER POSTEMPLOYMENT BENEFITS
JUNE 30, 2020**

Schedule of the Town's Contribution

	<u>June 30, 2020</u>	<u>June 30, 2019</u>	<u>June 30, 2018</u>
Actuarially determined contribution	\$ 3,100,442	\$ 3,642,490	\$ 2,885,252
Contributions in relation to the actuarially determined contribution	<u>(975,073)</u>	<u>(891,334)</u>	<u>(791,153)</u>
Contribution deficiency (excess)	<u>\$ 2,125,369</u>	<u>\$ 2,751,156</u>	<u>\$ 2,094,099</u>
Covered-employee payroll	\$ 14,853,229	\$ 14,420,611	\$ 13,628,053
Contributions as a percentage of covered- employee payroll	6.56%	6.18%	5.81%

Note: This schedule is intended to present information for 10 years. Until a 10-year trend is compiled, information is presented for those years for which information is available.

See notes to required supplementary information.

TOWN OF HOPEDALE
NOTES TO REQUIRED SUPPLEMENTARY INFORMATION
JUNE 30, 2020

Pension Plan Schedules

A. Schedule of the Town's Proportionate Share of the Net Pension Liability

The Schedule of Town's Proportionate Share of the Net Pension Liability details the allocated percentage of the net pension liability; the proportionate share of the net pension liability, and the covered employee payroll. It also demonstrates the net position as a percentage of the pension liability and the net pension liability as a percentage of covered payroll.

B. Schedule of Town's Contribution

Governmental employees are required to pay an annual appropriation as established by PERAC. The appropriation includes the amounts to pay the pension portion of each member's retirement allowance, an amount to amortize the actuarially determined unfunded liability to zero in accordance with the System's funding schedule, and additional appropriations in accordance with adopted early retirement incentive programs. The appropriations are payable on July 1, and January 1. The Town may choose to pay the entire appropriation in July at a discounted rate. Accordingly, actual contributions may be less than the "total appropriation". The pension fund appropriation is allocated to the Town based on covered payroll.

C. Schedule of the Commonwealth's Collective amounts of the Net Pension Liability

The Commonwealth of Massachusetts is a nonemployer contributor and is required by statute to make all actuarially determined employer contributions on behalf of the member employers which creates a special funding situation. Since the Town does not contribute directly to MTRS, there is no net pension liability to recognize. This schedule discloses the Commonwealth's 100% share of the collective net pension liability that is associated with the Town; the portion of the collective pension expense as both a revenue and pension expense recognized by the Town; and the Plan's fiduciary net position as a percentage of the total pension liability.

D. Changes in Plan Provisions – None

Other Postemployment Benefits Schedules

A. Schedule of the Town's Net OPEB Liability and Related Ratios

The Schedule of the Town's Net OPEB Liability and Related Ratios presents multi-year trend information on changes in the plan's total OPEB liability, changes in the plan's net position, and ending net OPEB liability. It also demonstrates the plan's net position as a percentage of the total liability and the plan's net OPEB liability as a percentage of covered-employee payroll.

B. Schedule of the Town's Contribution

The Schedule of the Town's contributions includes the Town's annual required contribution to the plan, along with the contribution made in relation to the actuarially determined contribution. The Town is not required to fully fund this contribution.

C. Changes in Provisions - None