

Board of Selectmen
January 21, 2021
7:00PM

Chair Keyes called the meeting to order at 7:01PM

Pledge of Allegiance

Consent Items

Approval of the MA Historic Commission Contract for Bancroft Library Roof Restoration and Repairs
Town Administrator Schindler stated the Town of Hopedale received a grant from the Massachusetts Historic for the roof restoration and repairs in the amount of \$55,000. The Town is also supplying some monies for this project as well. This project was voted for last year. Chair Keyes asked for clarification regarding what they will be voting on, is the Board voting to approve the contract and voting to approve the grant funding as two separate items? Town Administrator Schindler stated that as of now, the Board is voting to accept the grant award of \$55,000.

Robyn York, Hopedale Library Director shared some information regarding the grant. She stated that they applied for \$100,000 but were awarded \$55,000. Robyn stated that the grant pool is very competitive and that she is thankful that the Bancroft Library is awarded the \$55,000. Robyn thanked Bob Reed, Interim Town Administrator, for assisting her with this grant and thanked the current Town Administrator, Diana Schindler, for her assistance.

Selectman Hazard made a motion to accept the MA Historic Commission Contract for the Bancroft Library Roof Restoration and Repair in the amount of \$55,000. Selectman Arcudi seconded the motion.

Hazard – Aye, Arcudi – Aye, Keyes – Aye

Appointments and Resignations: None

New Business

Joint Meeting with Finance Committee

a. Planning of FY22 Budget

Timeline & Process

Wage/Benefits Increases for FY22

Capital Planning & Funding

Other Funding policies; Stabilization, OPEB

b. Cover Continuous Improvement Areas/List

Chris Hodgens, Chair of the Hopedale Finance Committee, called the joint meeting to order at 7:08PM

Chair Hodgens asked the Town Administrator, Diana Schindler, if there are any operational updates or upcoming items. Town Administrator stated regarding the half year expense report, the Legal budget item line was overdrawn but a donation has been made and the Board of Selectmen will approve the donation at their next scheduled meeting, putting the Legal budget item back in the black. She feels that Legal and health insurance should have a close eye kept on them. Recently, there was open enrollment for the Town's MedEx plan, there was also a meeting held last week with the PEC and the Health Insurance Consultant. We now have a timeline of when the premium increases will be announcing for these items, it is scheduled for some time the week of January 21, 2021. Regarding the revenues, at this time we do not have any indication of what they will be. Town Administrator Schindler informed the Boards that there was a heating system malfunction at the Police Department today (January 21, 2021) and that the budget will need to be reviewed to see where the funds will come from to correct this issue. Chair Hodgens asked Town Administrator Schindler if the Town will be informed of any preliminary state aid numbers through the MMA annual meeting? Town Administrator Schindler stated that there is likely to be some announcements regarding this. Diana Schindler also notified the Boards that she has spoken with the Water/Sewer Department and discussed the indirect costs and will be reviewing the indirect cost formula. She and the Town Accountant reviewed the revenue account that the Fire Department has been using to fund their operations, the town has been utilizing this account as an enterprise fund but in 2010 this account was set up as a receipt reserved for appropriation, intended to be money set aside for purchase of ambulances. Chair Hodgens asked Town Administrator Schindler if she has received all of the preliminary budget documents from each Department? Administrator Schindler responded that she has not received them all yet.

Town Administrator Schindler stated that we should consider wage increases for Departments, especially the Police Department. The Police Department has seen many employees leave due to other Towns offering a larger pay. Schindler also stated that the union contracts that are being negotiated need to be competitive especially when hiring. Chair Keyes stated that this is an issue that he has stressed since being elected to the Board. This is a year that we need find a way to correct these issues. He stated that he is going to move to delegate/nominate Selectman Louis J. Arcudi, III as a point for all negotiations for Police and Fire contracts. Chair Hodgens stated that he agrees with this item regarding annual wage increases. Hodgens stated that there are some factors that could assist this goal, such as, state funding, potential federal funding, the two marijuana retail companies that are planned to open in Hopedale within the next year or two would also bring in additional revenue to the Town. Patrick asked if there is any concern about having multiple cannabis shops in the small community, such as being in competition with each other. Chair Hodgens stated that this is a valid concern. He stated that with the Downtown development being discuss, he does not feel that the Town is "putting all of their eggs" in one basket in terms of revenue streaming. Town Administrator Schindler stated that for this year she would like the Capital Plan to be discussed more. She requested that the Town should discuss investing some revenue to the infrastructure of operations such as, codifying the zoning bylaws. The bylaws need to be up to date.

Chair Hodgens asked the Boards if there were items, they would like to add and see implemented this year that the Town was not able to do in previous years due to lack of funds? Colleen of the Finance Committee stated that she wishes to see the Town get a handle on the Health Insurance. Town Administrator Schindler stated that the contracts with the Unions have been challenging because the contracts are not on the same cycle. Schindler stated that the Town has coalition bargaining for health insurance. The other contracts for wages, paid time off, etc. are not on the same schedule as the PEC agreements. Selectman Arcudi added to Colleen's point is that the Town to do a better job educating the taxpayers. Selectman Arcudi gave an overview of various factors that impact the cost of health insurance to the town and a change from 80/20 to 75/25 may not deliver the magnitude of change anticipated; he will work on educating the public on this topic in the upcoming months.

Chair Hodgens asked Patrick Maloney to share the information he gathered regarding the Annual assessment to Blackstone Valley Regional Vocational Technical High School. This was also identified as a budget driver and subject of community interest at the July Annual Town Meeting. Patrick Maloney has reached out to the Hopedale representative, Michell Intinarelli, to engage in a discussion. He has also made contact with Senator Ryan Fattman's office and had contact with Keath Christensen, Chief of Staff for Senator Fattman, to discuss the topic at the state level.

A discussion around the diversification of industries to provide tax revenue took place. The updating and potential revision of zoning laws was raised; local codes and bylaw changes are in need of documentation for easy reference to support consideration for locations of business. The implementation of a burnable bulk fee is behind schedule. Diana Schindler anticipates an April 1st date. It is being determined who/which department will conduct the billing and collections.

Selectman Hazard asked if the timing of the wages and benefits is negotiable with the Unions? Hazard stated that it seems to be in the Town's best interest to have these items considered at the same time. Town Administrator Schindler stated that all are negotiated benefits, the health insurance benefits are a package (dental, life, retiree, etc) is one agreement that is negotiated with a Union Representative. The contracts are also negotiated with each individual unit, not on the same cycle. A discussion took place regarding the difficulties with negotiating benefits with multiple Unions across Town. School Superintendent, Karen Crebase was a part of this conversation. Selectman Arcudi stated that the benefits should not be part of the calculus when it comes to Town Employees salaries. He stated that he is not opposed to getting the Departments on the same cycle.

Town Administrator Schindler began a discussion regarding the Wage and Class Plan that was adopted by the Town in 2014. The Town adopted a portion of Mass General Law in 2014, this will guide the Town's salaries. She is working on creating a plan to get the employees' salaries adjusted.

Chair Hodgens stated that the Finance Committee's timeline and planning process regarding the FY22 budget will be to meet bi-weekly, twice a month until Town Meeting, some of the meetings will be joint meetings.

Selectman Arcudi asked is there is going to be a change in the valuation of the Draper property. Currently, they are paying on land and the building. Once the building is taken down as of June 30, 2021, will they no longer pay property tax on building? Don Comastra responded that once the building is down, the building value becomes zero. The land value will increase somewhat. The net is a decrease in revenue from this location.

Selectman Arcudi made a motion to adjourn the Board of Selectmen meeting. Selectman Hazard seconded the motion.

Arcudi – Aye, Hazard – Aye, Keyes – Aye

The Board of Selectmen dissolved their meeting at 8:21PM

Old Business

Public and Board Member Comments (votes will not be taken)

Correspondence and Selectmen Informational Items (votes will not be taken)

Requests for Future Agenda Items:

Administrator Updates (In Packet)

Executive Session

Submitted by:

Lindsay Mercier, Executive Assistant

Adopted: _____

The Bancroft Memorial Library
Hopedale, Massachusetts 01747
(508) 634-2209

February 26, 2021

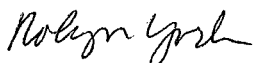
Brian Keyes
Louis Arcudi
Glenda Hazard
78 Hopedale Street
Hopedale, MA 01747

Dear Mr. Keyes, Mr. Arcudi, and Ms. Hazard:

The Bancroft Memorial Library has received a \$10 donation from Beth Fox and her daughter Brittany. This money will be put toward purchasing supplies for the unicorn make and take craft offered by the Children's Department in March. Programming and craft supplies are not within our town budget, so these funds do help us expand offerings to our community.

The library staff would like to thank Beth and Brittany for their sustained support and kind gestures.

Best regards,



Robyn York

Director
Bancroft Memorial Library

From: [Diana Schindler](#)
To: [Lindsay Mercier](#)
Subject: FW: Beyond Full Rent -February
Date: Thursday, March 4, 2021 7:35:16 AM

From: Garden Gate Florist [REDACTED] >
Sent: Monday, March 1, 2021 12:08 PM
To: Diana Schindler <DSchindler@hopedale-ma.gov>; Richard Yancey <beyondfull@yahoo.com>;
Garden Gate Florist [REDACTED] >
Subject: Beyond Full Rent -February

Afternoon Diana,

We hope this email finds you and your family well -

We wanted to reach out regarding February rent and ask for it to be forgiven do to the continued restrictions we have.

Thank you and we look forward to hearing from you.

Richie and Carrie

[Sent from Yahoo Mail for iPhone](#)



HOPEDALE FIRE DEPARTMENT

40 Dutcher Street - Hopedale MA. 01747

Tel. (508) 473-1050 Fax: (508) 902-0076

www.hopedale-ma.gov/fire-department

Thomas M. Daige – Fire Chief

David J. McMorrow – Deputy Chief



Board of Selectmen
Town Hall Office
78 Hopedale Street
Hopedale MA 01747

February 23, 2021

RE: Promotion of Call Firefighter Candidates

Mr. Chairman,

Call Candidates Justin Carnaroli, Kristin Krauss and Adam Kaminski-Miller have all successfully completed the Massachusetts Call/Volunteer Recruit Training Fire Academy. I respectfully request that all three members be promoted to the position of Call Firefighter effective March 1st, 2021.

Respectfully,



Thomas Daige
Fire Chief

HOPEDALE FIRE DEPARTMENT

NOTIFICATION OF EMPLOYMENT / PAYROLL CHANGE

- 1) Effective Date & Time: February 23rd. 2021
- 2) Employee: Carnaroll, Justin Unit #: 47
- 3) Home Address: [REDACTED]
- 4) Social Security #: _____
- 5) Phone #: _____ Business Phone #: _____
- 6) Change Authorized By: Thomas Dalge - Fire Chief Date: 2/23/2021
- 7) Change Approved By: _____ Date: _____

REPORTED CHANGE:

Whats	From	To:
Department:		
XX Job:	Call Candidate	Call Firefighter
Shift:		
Pay rate:		
Other:		

REASON FOR CHANGE(S)

- | | | |
|-------------------------------|-------------|---------------------|
| NEW HIRE (Part / Full Time) | REHIRE | XX PROMOTION |
| DEMOTION | TRASNFER | LAYOFF |
| XX PAY / STEP INCREASE | RESIGNATION | DISCHARGE |
| PROBATIONARY PERIOD END | RETIREMENT | LEAVE** |
| OTHER (Explain) | | |

** Leave of Absence From: _____ To: _____

NOTIFICATION OF ADDRESS CHANGE

NEW ADDRESS: _____

NEW PHONE #: _____

Notes:

***** TOWN HALL USE: *****			
Date Recorded:	_____	By:	_____
ISSUED:	Town handbook _____	Insurance Information:	_____ Federal: _____
State:	_____ Town _____	Appointment Notification:	_____

HOPEDALE FIRE DEPARTMENT

NOTIFICATION OF EMPLOYMENT / PAYROLL CHANGE

- 1) Effective Date & Time: February 23rd, 2021
- 2) Employee: Krauss, Kristin Unit #: 49
- 3) Home Address: [REDACTED]
- 4) Social Security #: _____
- 5) Phone #: _____ Business Phone #: _____
- 6) Change Authorized By: Thomas Dalgé - Fire Chief Date: 2/23/2021
- 7) Change Approved By: _____ Date: _____

REPORTED CHANGE:

Whats	From	To:
Department:	_____	_____
XX Job:	Call Candidate	Call Firefighter
Shift:	_____	_____
Pay rate:	_____	_____
Other:	_____	_____

REASON FOR CHANGE(S)

- | | | |
|-------------------------------------|-------------------|---------------------|
| _____ NEW HIRE (Part / Full Time) | _____ REHIRE | XX PROMOTION |
| _____ DEMOTION | _____ TRASNFER | _____ LAYOFF |
| XX PAY / STEP INCREASE | _____ RESIGNATION | _____ DISCHARGE |
| _____ PROBATIONARY PERIOD END | _____ RETIREMENT | _____ LEAVE** |
| _____ OTHER (Explain) _____ | | |

** Leave of Absence From: _____ To: _____

NOTIFICATION OF ADDRESS CHANGE

NEW ADDRESS: _____

NEW PHONE #: _____

Notes:

***** TOWN HALL USE: *****			
Date Recorded: _____		By: _____	
ISSUED: _____	Town handbook _____	Insurance Information: _____	Federal: _____
State: _____	Town _____	Appointment Notification: _____	

HOPEDALE FIRE DEPARTMENT

NOTIFICATION OF EMPLOYMENT / PAYROLL CHANGE

- 1) Effective Date & Time: February 23rd, 2021
- 2) Employee: Kaminski-Miller, Adam Unit #: 50
- 3) Home Address: [REDACTED]
- 4) Social Security #: _____
- 5) Phone #: _____ Business Phone #: _____
- 6) Change Authorized By: Thomas Dalgic - Fire Chief Date: 2/23/2021
- 7) Change Approved By: _____ Date: _____

REPORTED CHANGE:

Whats	From	To:
Department:		
XX Job:	Call Candidate	Call Firefighter
Shift:		
Pay rate:		
Other:		

REASON FOR CHANGE(S)

- | | | |
|-------------------------------------|-------------------|---------------------|
| _____ NEW HIRE (Part / Full Time) | _____ REHIRE | XX PROMOTION |
| _____ DEMOTION | _____ TRASNFER | _____ LAYOFF |
| XX PAY / STEP INCREASE | _____ RESIGNATION | _____ DISCHARGE |
| _____ PROBATIONARY PERIOD END | _____ RETIREMENT | _____ LEAVE** |
| _____ OTHER (Explain) _____ | | |

** Leave of Absence From: _____ To: _____

NOTIFICATION OF ADDRESS CHANGE

NEW ADDRESS: _____

NEW PHONE #: _____

Notes:

***** TOWN HALL USE: *****

Date Recorded: _____ By: _____

ISSUED: Town handbook _____ Insurance Information: _____ Federal: _____

State: _____ Town _____ Appointment Notification: _____



HOPEDALE FIRE DEPARTMENT

40 Dutcher Street - Hopedale MA. 01747

Tel. (508) 473-1050 Fax: (508) 902-0076

www.hopedale-ma.gov/fire-department

*Thomas M. Daige – Fire Chief
David J. McMorrow – Deputy Chief*



Board of Selectmen
Town Hall Office
78 Hopedale MA 01747

February 24, 2021

Re: Call Firefighter Appointment

Mr. Chairman,

On Tuesday February 23rd, 2021, the Deputy, Call Department Officers and I had the pleasure of interviewing a Candidate for the position of Call Firefighter and I would like to put his name forward to be appointed to the Fire Department.

Mr. Brandon DeLuca recently moved to Hopedale in September and he is a career Firefighter/Paramedic for the Town of Mansfield Fire Department where he has been for the past two years. Prior to working in Mansfield, Mr. DeLuca worked with the Falmouth Fire Department as a Firefighter/Paramedic for three years.

Mr. DeLuca is a graduate of Marshfield High School, Cape Cod Community College (AS – Fire Science), Bay State College (AS – Physical Therapy), Salem State University (BS – Fire Science/Administration) and is currently enrolled at Anna Maria College pursuing his Master's Degree in Fire Science/Administration. Mr. DeLuca is also a graduate of the Massachusetts Firefighting Academy Career Recruit Training Program where he obtained his Firefighter I/II Pro-Board Certification.

It is my recommendation that the Board appoint Brandon DeLuca of Hopedale to the position of Call Firefighter effective March 1st, 2021.

Respectfully,


Thomas Daige
Fire Chief

**TOWN OF HOPEDALE
BOARD, COMMISSION OR COMMITTEE
TALENT BANK FORM**

Local Government needs citizens to give of their time and talents serving the Town of Hopedale. A Talent Bank has been established to compile a list of interested citizens, willing to serve on a voluntary basis on boards, commissions and committees. Some groups meet often, others require less time, and still others are busy only at specific times of the year. Occasionally, there are requirements for ad hoc committees or sub-committees appointed to work on specific projects. Experience indicates that the two most appropriate qualities for successful service are an open mind and exercise of common sense.

If you are interested in serving, please list the position(s) you wish to be considered for:

Board, Commission or Committee applying for:

Finance Committee - Member

Please return completed forms to:

Town Administrator's Office – Hopedale Town Hall 78 Hopedale Street, Hopedale, MA 01747

The Town Hall mailing address is: P.O. Box 7, Hopedale MA, 01747

Please Note:

- The Board of Selectmen may fill vacancies until next election.
- It is recommended that you attend a few meetings of the committee or board you are contemplating joining to help determine your interest.
- The board/committee will be asked for their recommendation on each applicant appointment.

Name: Ken Wilson

Are you a registered voter? Yes No

Address: [REDACTED]

How long have you lived in Hopedale? May 2000

Home Phone: [REDACTED] Cell Phone: [REDACTED] E-Mail: [REDACTED]

How would you like to be contacted? Cell Phone and personal e-mail.

Occupation: Supply Chain and Logistics Senior Manager

Please list any potential conflicts of interest, e.g. membership in an organization or your

business: None

Education and Experience: M.A., B.S, A.S, 35 years experience with focus in logistics and supply chain.

9 years US Army (Captain, Army Engineer). See LinkedIn profile <https://www.linkedin.com/in/ken-wilson-0b239612/>

How many times during the last year have you attended a meeting of the Board/Committee to which you are requesting appointment? Approximately 5

Have you ever had business before the Board/Committee to which you are requesting an appointment?

Yes No If yes what type of business? No

Special interests and skills: _____

Experienced Logistics and Supply Chain professional with a strong background in retail distribution and third-party logistics (3PL). Skilled in Operations Management, Transportation Planning & Execution, Strategic Sourcing, Warehouse/Distribution Center Operations, Project Management, and Continuous Improvement. Extensive history of leadership and team-building in both private sector and as an Army Engineer Officer.

Activities, e.g. Government/Civic & Community/Charitable & Educational: _____

Nothing recently. Several years ago, I was able to help the Hopedale BSA - Cub Scouts as Treasurer. Based upon work and family, I was not able to participate as actively. Today's teleconference technology (AKA Zoom) should enable me to contribute to this group.

Reasons for wanting to serve: _____

Would like the ability to present recommendations and solution to committee vs. having a limited role as a "spectator". I have been vocal about recommendations about communication and change management, particularly with respect to our town budget.

The completion of this form in no way assures appointment. Citizens deemed most qualified to serve in a particular capacity will fill all board, commission or committee vacancies.

Applicant's Signature K. Wilson Date March 1, 2021

Note: Applicant Signature is electronic utilizing Adobe Reader Signature functionality.



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
Vacant

Town Administrator
Diana M. Schindler

Letter of Commitment Town of Hopedale – Planning Board

March 5, 2021
Physical Development Committee
Central Mass. Regional Planning Commission
1 Mercantile Street, Suite 520
Worcester, MA 01608

Attn. Committee Members,

Please accept this letter of commitment from the Hopedale Planning Board for the Town of Hopedale's application for District Local Technical Assistance resource aid. The Town of Hopedale requests assistance to implement an online permitting guide.

Hopedale is currently developing a Master Plan in conjunction with CMRPC. Phase I includes the Economic Development chapter. Permitting and new/local business growth have been repeatedly identified as challenges in Town by, Town Staff, Officials, and community participants through the Master Plan survey and Visioning processes. A clear and concise permitting guide will help bring desired businesses into Town, support Municipal financial health, provide job and business opportunities, and improve local accessibility of goods and services.

This project aims to create a clear and consistent path to permitting to promote economic development for businesses and our residents. It will map out the current permitting process and create multiple easy-to-follow guide formats (online walk-through, PDF long form, and a printable flow chart). By clarifying the current permitting process, this project will also lay the basis for future analysis of challenges and identification of potential improvements.

The Town Administrator, Executive Assistant and Planning Board will provide relevant permitting information and review guides. They will coordinate with website developers to upload onto the Hopedale website. CMRPC Staff will assemble and edit the guide. The Town of Hopedale will begin project development with CMRPC in March of 2021 with the goal to have the final deliverables in December of 2021.

If awarded DLTA resource aid, Town Administration can continue to work with CMRPC to create a Covid-19 appropriate community outreach process. It is essential to have adequate time and resources to collect feedback from various sections of the community.

I affirm that the Town of Hopedale understands and is committed to the proposed DLTA process, and that we will be fully engaged in DLTA activities and plans. We will follow through on these commitments.

Steve Chaplin, Chair of the Planning Board

(Date)



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
Vacant

Town Administrator
Diana M. Schindler

Letter of Commitment Town of Hopedale – Town Administrator

March 5, 2021
Physical Development Committee
Central Mass. Regional Planning Commission
1 Mercantile Street, Suite 520
Worcester, MA 01608

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I affirm that the Town of Hopedale understands and is committed to the proposed DLTA process, and that we will be fully engaged in DLTA activities and plans. We will follow through on these commitments.

Diana Schindler, Town Administrator

(Date)

LURIE FRIEDMAN LLP

ONE MCKINLEY SQUARE
BOSTON, MA 02109

HARLEY C. RACER

617-367-1970
hracer@luriefriedman.com

March 3, 2021

By Hand Delivery

Civil Clerk's Office
Worcester County Superior Court
225 Main St.
Worcester, MA 01608

RE: Elizabeth Reilly, et al., v. Town of Hopedale, et al.

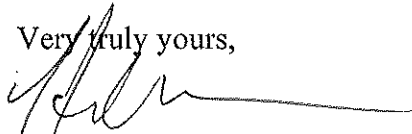
Dear Sir or Madam:

Please find enclosed for filing:

1. Civil Action Cover Sheet;
2. Verified Complaint with Exhibits;
3. Plaintiffs' Motion for Appointment of Special Process Server;
4. Plaintiffs' Motion for Preliminary Injunction;
5. Memorandum in Support of Plaintiffs' Motion for Preliminary Relief;
6. Proposed Order on Plaintiffs' Request for Preliminary Relief;
7. Plaintiffs' Motion for Short Order of Notice; and
8. Check in the amount of \$300 to cover the costs of the filing fee and five (5) summons.

Thank you for your assistance with this filing.

Very truly yours,



Harley C. Racer

Enclosures

cc: David E. Lurie, Esq.
Elizabeth Reilly

PLAINTIFF(S): Elizabeth Reilly and ten other taxpayer citizens (See Attached) ADDRESS: _____	COUNTY Worcester
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	DEFENDANT(S): Town of Hopedale, Louis J. Arcudi, et al. (See Attached)
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ATTORNEY: David E. Lurie (BBO #542030), Harley C. Racer (BBO #688425) ADDRESS: One McKinley Square, Boston, MA 02109	ADDRESS: Town of Hopedale, Town Hall 78 Hopedale St., Hopedale, MA 01747
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BBO: _____

CODE NO.	TYPE OF ACTION AND TRACK DESIGNATION (see reverse side)	TRACK	HAS A JURY CLAIM BEEN MADE?
AC1, AD1	c. 40, §53; c. 61; c. 214, §7A	A	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO

*If "Other" please describe:

Is there a claim under G.L. c. 93A? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	Is this a class action under Mass. R. Civ. P. 23? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
--	--

STATEMENT OF DAMAGES PURSUANT TO G.L. c. 212, § 3A

The following is a full, itemized and detailed statement of the facts on which the undersigned plaintiff or plaintiff's counsel relies to determine money damages. For this form, disregard double or treble damage claims; indicate single damages only.

TORT CLAIMS
(attach additional sheets as necessary)

- A. Documented medical expenses to date:
- | | |
|--|-----------------|
| 1. Total hospital expenses | \$ _____ |
| 2. Total doctor expenses | \$ _____ |
| 3. Total chiropractic expenses | \$ _____ |
| 4. Total physical therapy expenses | \$ _____ |
| 5. Total other expenses (describe below) | \$ _____ |
| Subtotal (A): | \$ _____ |
- B. Documented lost wages and compensation to date \$ _____
- C. Documented property damages to date \$ _____
- D. Reasonably anticipated future medical and hospital expenses \$ _____
- E. Reasonably anticipated lost wages \$ _____
- F. Other documented items of damages (describe below) \$ _____

G. Briefly describe plaintiff's injury, including the nature and extent of injury:

TOTAL (A-F): \$ _____

CONTRACT CLAIMS
(attach additional sheets as necessary)

This action includes a claim involving collection of a debt incurred pursuant to a revolving credit agreement. Mass. R. Civ. P. 8.1(a).
 Provide a detailed description of claim(s):

TOTAL: \$ _____

Signature of Attorney/ Unrepresented Plaintiff: X **Date: 3/3/21**

RELATED ACTIONS: Please provide the case number, case name, and county of any related actions pending in the Superior Court.

CERTIFICATION PURSUANT TO SJC RULE 1:18

I hereby certify that I have complied with requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods of dispute resolution.

Signature of Attorney of Record: X **Date: 3/3/21**

Citizen Plaintiffs

1. Janice M Doyle, 178 Hopedale Street, Hopedale MA 01747;
2. Jason A Beard, 37 Freedom Street, Hopedale MA 01747;
3. Amy Beard, 37 Freedom Street, Hopedale MA 01747;
4. Shannon W Fleming, 56 Mendon Street, Hopedale MA 01747;
5. Meg Fleming, 56 Mendon Street, Hopedale MA 01747;
6. Elizabeth Reilly, 68 Dutcher Street, Hopedale MA 01747;
7. Carol J Hall, 64 Westcott Road, Hopedale MA 01747;
8. Donald Hall, 64 Westcott Road, Hopedale MA 01747;
9. David Smith, 5 Hammond Road, Hopedale MA 01747;
10. Hilary Smith, 5 Hammond Road, Hopedale MA 01747; and
11. Stephanie McCallum, 107 Hopedale Street, Hopedale MA 01747.

Defendants

1. Town of Hopedale 78 Hopedale St., Hopedale MA 01747
2. Louis J. Arcudi, III 78 Hopedale St., Hopedale MA 01747
3. Brian R. Keyes 78 Hopedale St., Hopedale MA 01747
4. Grafton & Upton Railroad Company 42 Westboro Rd., North Grafton, MA 01536
5. Jon Delli Priscoli 7 Eda Avenue Carver, MA 02330
6. Michael R. Milanoski 7 Eda Avenue Carver, MA 02330
7. One Hundred Forty Realty Trust 7 Eda Avenue Carver, MA 02330

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

ELIZABETH REILLY, CAROL J. HALL,)
DONALD HALL, HILARY SMITH,)
DAVID SMITH, MEGAN FLEMING,)
STEPHANIE A. MCCALLUM,)
JASON A. BEARD, AMY BEARD,)
SHANNON W. FLEMING, and)
JANICE DOYLE,)

Plaintiffs,)

v.)

TOWN OF HOPEDALE, LOUIS J.)
ARCUDI, III, BRIAN R. KEYES,)
GRAFTON & UPTON RAILROAD)
COMPANY, JON DELLI PRISCOLI,)
MICHAEL MILANOSKI, and ONE)
HUNDRED FORTY REALTY TRUST,)

Defendants.)
_____)

Civil Action No.

VERIFIED COMPLAINT

This is an action by more than ten taxpaying citizens of the Town of Hopedale (“Town”) against the Hopedale Board of Selectmen (“Board”) and the Grafton & Upton Railroad Company (“Railroad”)¹ to restrain the Board from making unauthorized expenditures as part of a settlement agreement between the Board and the Railroad (“Settlement Agreement”); to enforce the Town’s statutory right to exercise its first refusal option to acquire 130 acres of forestland pursuant to M.G.L. c.61, which the Board illegally agreed to release and waive; and to protect

¹ Railroad parties includes the defendants Grafton & Upton Railroad, its owner, Jon Delli Priscoli and its president, Michael Milanoski, and the One Hundred Realty Trust, collectively, “Railroad”.

from damage the forestland as parkland dedicated to the public use and protected by Article 97 of the Amendments to the Massachusetts Constitution.

The Town and the Railroad each sought to acquire 155 acres of undeveloped property at 364 West St., Hopedale (the "Property"). Of the 155 acres of the Property, 130 acres are classified as forestland (the "Forestland") under M.G.L. c. 61. Chapter 61 requires that a notice be sent to the Town of any intent to sell or convert the Forestland for another use and provides the Town a statutory right of first refusal to purchase the Property. The remaining 25 acres of the Property are wetlands that run through a portion of the Forestland (the "Wetlands"). The Town intended to preserve the Property, which is contiguous with the 279-acre Town-owned Hopedale Parklands, as parkland for conservation and recreation and as a potential location for a much-needed municipal water supply. The Railroad intended to raze the Forestland and construct an industrial railyard on the Property.

The Property owner entered into a Purchase and Sale Agreement with the Railroad and provided the Town with a Notice of Intent to sell the Property and the Town took all the necessary steps to exercise its statutory first refusal option. This included a Town Meeting vote to authorize the option's exercise and appropriation of \$1,175,000, in substantial reliance on a \$750,000 gift from the Hopedale Foundation. The Board then voted to exercise the Town's option and recorded the Town's exercise of its option at the Registry of Deeds.

During the process of the Town's exercise of its statutory option, the Railroad orchestrated an unlawful series of maneuvers designed to extinguish the Town's c. 61 rights and claim effective control of the Property, improperly invoking federal railroad preemption as a bar against the Town's exercise of its c. 61 first refusal option.

The Town sued the Railroad in Land Court to protect its c. 61 rights and prevent the Railroad from clearing the Property. As part of the litigation, the Railroad and the Town engaged in confidential mediation which culminated with two of the three members of the Board² entering into the Settlement Agreement without statutorily-required Town Meeting approval. The Settlement Agreement exceeds the Board's authority, expends unauthorized funds, wrongfully transfers the Town's ownership interests in the Property to the Railroad for non-Forestland, non-parkland use, violates the purpose of the c. 61 conveyance and violates laws designed to protect the environment. In contradiction with the Town Meeting vote, the Board agreed to give the Railroad approximately 90 of the 130 acres of Forestland, to which the Town is rightfully entitled, to be developed into an industrial railyard. The Board also improperly obligated, without authorization of a Town Meeting vote or Finance Committee review, the Town to pay the Railroad more than \$587,500 to purchase from the Railroad approximately 40 acres, or less than one-third, of the Forestland.

Plaintiffs bring these claims to restrain the Board from making the illegal expenditures and to protect and reclaim the Property that rightfully belongs to the Town as public parkland and as a potential water supply source.

PARTIES

1. Plaintiffs are Elizabeth Reilly, Carol J. Hall, Donald Hall, Hilary Smith, David Smith, Megan Fleming, Stephanie A. McCallum, Jason A. Beard, Amy Beard, Shannon W. Fleming, and Janice Doyle. Each Plaintiff is a taxpaying resident and citizen of Hopedale, Massachusetts.

2. Defendant Town of Hopedale is a body corporate and politic established under the

² A third member of the Board, Glenda Hazard, refused to sign the Settlement Agreement and has since resigned from the Board.

laws of the Commonwealth of Massachusetts.

3. Defendant Hopedale Board of Selectmen is a duly constituted board of Hopedale with its principal office at 78 Hopedale Street, Hopedale, Massachusetts.

4. Defendant Louis J. Arcudi, III is a member of the Hopedale Board of Selectmen and resides in Hopedale, Massachusetts. He is sued in his official capacity.

5. Defendant Brian R. Keyes is a member of the Hopedale Board of Selectmen and resides in Hopedale, Massachusetts. He is sued in his official capacity.

6. Defendant Grafton & Upton Railroad Company is a domestic profit corporation organized and existing under the laws of Massachusetts and with its principal place of business located in North Grafton, Massachusetts.

7. Defendant Jon Delli Priscoli is the principal owner of Grafton & Upton Railroad Company and resides in North Grafton, Massachusetts. Delli Priscoli is also a Trustee of the One Hundred Forty Realty Trust, which is a nominee trust established under a declaration of trust dated September 16, 1981 and recorded in the Worcester Registry of Deeds in Book 7322, Page 177. This action is brought against Delli Priscoli in his capacity as owner of the Railroad and as a trustee.

8. Defendant Michael R. Milanoski is the president of the Railroad and resides in Cohasset, Massachusetts. Milanoski is also a Trustee of the One Hundred Forty Realty Trust, which is a nominee trust established under a declaration of trust dated September 16, 1981 and recorded in the Worcester Registry of Deeds in Book 7322, Page 177. This action is brought against Milanoski in his capacity as president of the Railroad and as a trustee.

9. One Hundred Forty Realty Trust is a nominee trust established under a declaration of trust dated September 16, 1981 and recorded in the Worcester Registry of Deeds in Book 7322, Page 177.

JURISDICTION AND VENUE

10. This Court has jurisdiction over the parties and the subject matter of this action pursuant to M.G.L. c. 40, § 53; c. 40A, § 3; c. 44, §§ 31, 53, 59 c. 45, § 7; c. 212, § 4; and c. 214, and 7A.

11. This Court has personal jurisdiction over Defendants pursuant to M.G.L. c. 223A because each Defendant is (1) a body corporate and politic established under the laws of the Commonwealth of Massachusetts, (2) is a duly constituted board or committee thereto, (3) transacted business in Massachusetts, and/or (4) resides in Massachusetts.

12. Venue is proper in this Court because the municipal entity Defendant's location is in Worcester County, Massachusetts, it affects land in Worcester County, Massachusetts and all Defendants conduct business in Worcester County, Massachusetts.

FACTS

13. Charles E. Morneau was the prior Trustee ("Prior Trustee") of the One Hundred Forty Realty Trust (the "Trust"), which owns 155.24 acres of undeveloped land at 364 West Street in the northern tip of Hopedale, Massachusetts (the "Property").

14. Of the 155.24 acres, 130.18 acres are, and have been since 1992, classified as forestland subject to M.G.L. c. 61 (the "Forestland").

15. The Forestland surrounds and has running through it 25.06 acres of wetlands that are excluded from the Forestland c. 61 classification (the "Wetlands").

16. The Property is depicted on the map attached hereto as **Exhibit 1**. The Property is indicated on Exhibit 1 as the orange area in the center of the map. The dark shaded area in the southeast portion of the Property is the Wetlands, the non-shaded portion is the Forestland.

17. The Property abuts and is contiguous with the Town-owned 279-acre public forested park, the Hopedale Parklands, depicted by the yellow area on Ex. 1.

18. The Property is also one of the few remaining sites available to the Town to potentially locate a much-needed Town water supply. See Environmental Partners Group, Inc. Report on the Property as new water supply, attached hereto as **Exhibit 2**. The report notes that the Property is within the watershed for all of Hopedale's public water supply wells and that the Property provides an important buffer to protect the Town's water supply.

19. The Grafton & Upton Railroad crosses the Forestland running, roughly, north to south. See Ex. 1.

20. The Railroad has also long coveted the Property to expand its rail system in Hopedale and construct a transloading facility.

21. The Railroad had, since March 15, 2019, tried to obtain the Property by eminent domain by filing a petition with the Massachusetts Department of Public Utilities. The Railroad's attempt to take the Property through the eminent domain process was stymied after opposition by the Town, Conservation Commission, and Water & Sewer Commission, among others.

22. The Railroad also failed to secure a public private partnership with the Town to obtain some portion of the Property.

23. On or about June 27, 2020, the Prior Trustee of the Property entered into a Purchase and Sale Agreement with Defendant Jon Delli Priscoli, owner of the Railroad and

trustee of New Hopping Book Realty Trust, for the Railroad to purchase the Property from the Trust for \$1,175,000.

24. The 130.18 acres of Forestland on the Property are subject to the protections of M.G.L. c. 61, including § 8, which prohibits sale for or conversion to industrial or commercial use unless the Town has been properly notified of the intent to sell for or to convert to that other use and given 120 days to exercise a right of first refusal to purchase the land pursuant to the same terms set forth in the purchase and sale agreement.

25. On or about July 9, 2020, Defendant Michael Milanoski, President of the Railroad, on behalf of the Prior Trustee, provided the Town with a Notice of Intent to Sell Forest Land Subject to Chapter 61 (“Notice”) to be used for railroad transloading uses. The Notice is attached hereto as **Exhibit 3**.

26. The Notice included the entire 155.24 acres of the Property in the \$1,175,000 purchase price, including the 130.18 acres of Forestland and the 25.06 acres of Wetlands, without providing the purchase price of the 130.18 acres Forestland separately.

27. The Town informed the Prior Trustee and the Railroad that the Town was considering exercise of its statutory first refusal option to purchase the Property from the Prior Trustee. The Town also informed the Trust and the Railroad that the Notice was insufficient because it included non-Forestland in the total purchase price. See August 19, 2020 letter, attached hereto as **Exhibit 4**.

28. On or about August 26, 2020, the Hopedale Foundation informed the Town by letter that “[i]f the Town of Hopedale decides to exercise its option to purchase property at 364 West Street, Hopedale, MA . . . [t]he Hopedale Foundation would be willing to assist the Town of Hopedale in reducing its financial burden as a result of the purchase.” See **Exhibit 5**.

29. By letter on or about October 7, 2020, a month before the Town's 120-day option period would expire on the Notice, the Prior Trustee claimed that its own prior Notice was not defective due to its inclusion of the Wetlands in the purchase price. See Exhibit 6.

30. The Prior Trustee by the same letter purported to also withdraw its Notice, claiming it "specifically withdraws its Notice of Intent to sell or convert the land that is currently in Forest Land subject to Chapter 61. Any further notice to sell or convert the land will be subject to a new notice of Intent." Ex. 6,

31. The Town responded by letter dated October 8, 2020 that the first refusal option had ripened and, therefore, is irrevocable. See Exhibit 7. The Town continued its process towards exercising its first refusal option to purchase the Forestland.

32. On September 10, 2020, the Hopedale Finance Committee voted to approve its Due Diligence Report on the financial impact of the Town's exercise of its first refusal option to purchase the Forestland. See Exhibit 8. The Finance Committee strongly recommended that the Town purchase the Forestland. In its report, the Finance Committee noted that the Hopedale Foundation had indicated interest in assisting acquiring the property under the Town's first refusal option. The Finance Committee did not have any further details of the gift from the Hopedale Foundation but did include a hypothetical net debt service estimate based on an assumed donation from the Hopedale Foundation of \$750,000 over time, or approximately half of the cost of the purchase of the Property, including debt service. Id., Exhibit C.

33. Just two days after the Finance Committee Report and four days after the Town informed the Railroad it was moving forward to exercise its first refusal option, the Railroad orchestrated a series of conveyances designed to illegally seize control of the Property before the

Town could finalize the exercise its first refusal option and attempted to squelch the Town's first refusal right.

34. On October 12, 2020, the owner of the beneficial interest of the Trust assigned the entire beneficial interest in the Forestland of the Property, protected under c. 61, to the Railroad for \$1,175,000.

35. On the same day, the Prior Trustees resigned and named defendants Delli Priscoli and Milanoski as the new trustees.

36. On the same day, the Prior Trustee sold to the Railroad the Property's 25.06 acres of Wetlands that are surrounded by the Forestland plus an additional 20-acre parcel on the opposite side of West Street, at 363 West Street, for \$1.00.

37. On or about October 15, 2020, the Railroad informed the Town by letter of its bait and switch land deal but did not provide a further formal notice pursuant to c. 61 or recognize the Town's right of first refusal. See Exhibit 9.

38. The Prior Trustee and the Railroad never provided the Town with a formal Notice of its intent to sell the Forestland to the Railroad for Railroad use through sale of 100% beneficial interest and appointment of the Railroad as Trustee, in violation of the requirements of c. 61.

39. The Trust's assignment of 100% of its beneficial interest to the Railroad was equivalent to a transfer of title to the c. 61 Forestland and therefore constituted a sale of land taxed under c. 61 for non-forest purposes giving rise to a separate and independent first refusal option in the Town.

40. On or about October 17, 2020, the Hopedale Foundation reaffirmed its gift offer, "to assist the Town of Hopedale in reducing its financial burden as a result of the Town of

Hopedale exercising its option to purchase the [Property], as represented in the Notice of Intent to Sell . . . [t]he Trustees voted that after the purchase of the land The Hopedale Foundation would grant to the Town of Hopedale the amount of seven hundred and fifty thousand dollars (\$750,000) to be paid in increments of fifty thousand dollars (\$50,000) per year for a period of fifteen years.” See Exhibit 10.

41. On October 21, 2020, the Town informed the Trust and the Railroad that the Town holds an irrevocable option to purchase the Forestland based on the July 9, 2020 Notice that cannot be withdrawn, but in addition, that the Town has a separate and independent opportunity to exercise its statutory first refusal option to the Forestland based on the sale of the 100% of the beneficial interest in the Trust to the Railroad. See October 21, 2020 letter attached hereto as Exhibit 11.

42. On October 22, 2020, the Environmental Partners Group, Inc. provided its Report to the Town, reporting that conservation of the Property is critical to protection of the Town’s water supply and that the Town would need to control of the Property in order for the Town to develop a new water supply. Ex. 2.

43. On October 24, 2020, the Town held a Special Town Meeting, attended in person (despite Covid-19) by over 400 citizens of Hopedale.

44. Article 3 of the Town Meeting Warrant was:

To see if the Town will vote to acquire, by purchase or eminent domain, certain property, containing 130.18 acres, more or less, located at 364 West Street . . . and in order to fund said acquisition, raise and appropriate, transfer from available funds, or borrow pursuant to G.L. c. 44, §7, or any other enabling authority, a sum of money in the amount of One Million One Hundred and Seventy-Five Thousand Dollars (\$1,175,000.00), and to apply any discretionary grants, gifts, awards, or donations of money given to the Town for the purpose of land conservation, said property being acquired pursuant to a right of first refusal in G.L. c. 61, §8, which right is subject to exercise by a vote of the Board of Selectmen, such acquisition to be made to maintain and preserve said

property and the forest, water, air, and other natural resources thereon for the use of the public for conservation and recreation purposes to be managed under the control of the Hopedale Parks Commission, and further 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; or take any action related thereto.

See Special Town Meeting Minutes, attached hereto as **Exhibit 12** (emphasis added).

45. The members of the Town spoke overwhelmingly in favor of acquiring 130.18 acres of Forestland for the use of the public for conservation and recreation purposes. The Finance Committee recommended approval of Article 3 and informed the Town Meeting of the Hopedale Foundation's gift offer. Chairs of the Conservation Commission and Water and Sewer Commissions all spoke in favor of the Article.

46. Board Chairman Brian Keyes moved to appropriate \$1,175,000, less amounts received by gift, to acquire the 130.18-acre Forestland and the motion passed unanimously.

47. Article 5 asked the Town to consider whether "to take by eminent domain pursuant to Chapter 79 of the General Laws, for the purpose of public park land" the 25.06 Wetlands and to appropriate funds for the taking.

48. The Town approved the motion to purchase or take by eminent domain the Wetlands and to appropriate \$25,000 to fund the acquisition.

49. The Board, on October 30, 2020, voted to exercise its first refusal option to acquire the Forestland and to take by eminent domain the Wetlands, each vote consistent with the Town Meeting warrant votes. The October 30, 2020 Board meeting minutes reflect that when the Board voted, it thanked the Hopedale Foundation for its donation, and confirmed "that this warrant article is for the acquisition of the land [] for public conservation and is consistent with Article 97 [. . .] [and] that once this land is moved into Article 97, the town would need a

2/3rds vote from Massachusetts Legislature to change this.” October 30, 2020 Board minutes attached hereto as **Exhibit 13**.

50. Despite the Town’s ongoing process of exercising its first refusal option through Town Meeting votes and the Board’s votes, the Railroad began clearing the Forestland, prompting the Town, on October 28, 2020, to sue the Railroad in Land Court, styled Town of Hopedale v. Jon Delli Priscoli Trustee of the One Hundred Forty Realty Trust, et al., 20 MISC 000467, to seek a judicial order that the Notice was effective. The Town also moved to enjoin the Railroad’s Forestland clearing.

51. On November 2, 2020, the Town recorded notice of the decision to exercise the first refusal option in the Worcester South District Registry of Deeds, attached hereto as **Exhibit 14**. The Notice of Exercise references the dubious steps taken by the Railroad in its attempt to squelch the Town’s c. 61 rights.

52. The Town sent the Notice of Exercise with the purchase and sale agreement to the Trust, perfecting its exercise of the first refusal option as required under c. 61, § 8.

53. The Board validly exercised the first refusal option to purchase the c. 61 Forestland on behalf of the Town.

54. The Railroad refused to agree to sell the c. 61 Forestland to the Town despite the Town’s valid exercise of its first refusal option.

55. Also on November 2, 2020, the Town formally recorded its taking by eminent domain of the 25.06 acres of Wetlands. See **Exhibit 15**.

56. The Railroad, just before hearing on the Town’s motion for preliminary injunction, filed a Petition for a Declaratory Order with the Surface Transportation Board that the Town’s rights under c. 61 were preempted by federal railroad law.

57. Following a hearing on November 23, 2020, the Land Court denied the Town's request for a preliminary injunction in a brief and narrow decision finding expressly that the Town is entitled to a right of first refusal but that it was unclear whether or when that right had triggered or ripened:

While **the Town is entitled to a right of first refusal under Chapter 61**, it is not clear whether an option period has been triggered and if so, when that occurred. The July 9, 2020 NOI appears to be defective because it encompassed both Chapter 61 forest land and another parcel of land without Chapter 61 protections, but did not include segregated valuations for each parcel. The NOI was defective because it did not provide adequate statutory notice to the Town of the cost to purchase the Chapter 61 land as required and therefore did not constitute a bona fide offer.

See Land Court Docket, Order dated 11/23/2020 attached as **Exhibit 16**

(emphasis added).

58. The Land Court further found that because the Railroad represented that it would work with the Town to maintain the status quo and not clear any more of the Forestland, there was no risk of irreparable harm.

59. Thus, the Land Court held preliminarily that the only formal Notice of Intent sent to the Town was defective, as the Town had initially advised, because it included non-Forestland with the Forestland in the Notice's purchase price. The Court did not reach any of the other issues raised in the litigation by the Town or the Railroad, including whether federal railroad preemption trumped the Town's c. 61 rights.

60. In January 2021, the Town and the Railroad engaged in two sessions of mediation, culminating in a Term Sheet that was revealed to the Town at a January 25, 2021 Board meeting. Despite ongoing community opposition, the Board voted 2-1 to approve the Term Sheet. The Term Sheet called for a Settlement Agreement to be prepared and executed no later than February 9, 2021.

61. On February 5, 2021, the Hopedale Board of Water and Sewer Commissioners requested, by letter, that the Board cease and desist from any further negotiations or agreement with the Railroad with respect to water rights for the Town. See **Exhibit 17**. The Water and Sewer Commissioners informed the Board that the Term Sheet abrogates and impairs the authority and sole jurisdiction of the Commission and that the Board lacks the authority to speak on behalf of the Commission or limit its powers.

62. By a letter dated February 7, 2021, the Citizen Plaintiffs expressed their strong objections to the Term Sheet, including that it was illegal because, *inter alia*, the Railroad is not the rightful property owner, it is in violation of the Town's right of first refusal pursuant to M.G.L. c. 61, is an agreement to which the Board has not been authorized to enter and would be in violation of Article 97. See Demand Letter attached hereto as **Exhibit 18**.

63. Despite the Demand Letter and other objections voiced by Town residents, the Board voted 2-1 to in executive session to approve a Settlement Agreement with the Railroad.

64. The Settlement Agreement was executed between the Board and the Railroad on February 9, 2021 and is attached hereto as **Exhibit 19**.

65. The Agreement is in direct conflict with what the Town appropriated at Town Meeting and is in excess of the Board's authority.

66. In the Agreement, the Board agreed that the Town would pay \$587,500 to the Railroad in exchange for only approximately 40 acres of the 130.18 acres of Forestland.

67. The Town Meeting vote, however, approved purchase of the entire 130.18 acres of Forestland for \$1,175,000, not 40 +/- acres for \$587,500.

68. It is less than a third of the land and the cost is higher. The approximate cost per acre of Forestland that was authorized was \$9,026; the Settlement requires that the Town pay \$14,687.50 per acre of Forestland.

69. The Board is not authorized to pay \$587,500 for 40 acres of Forestland.

70. The purpose of the Town Meeting vote on Article 3 was to acquire all 130.18 acres of Forestland and preserve it as parkland and prevent industrial development by the Railroad on that land.

71. The Settlement Agreement is starkly inconsistent with this expressed purpose as it allows the Railroad to acquire and develop 90 of the 130 acres of Forestland, and to build industrial buildings on that land.

72. The Town Meeting vote authorized the appropriation only in the event that the first refusal right was exercised. The gift from the Hopedale Foundation, accepted by the Town through the Town Meeting vote, was also conditioned on the exercise of the first refusal right for the entire c. 61 Forestland.

73. In the Agreement, the Board frustrated and acted contrary to the purpose of the Hopedale Foundation's gift by agreeing to purchase only a third of the Forestland and allow the Railroad to clear two-thirds of the Forestland for an industrial railyard.

74. On February 24, 2021, the Hopedale Foundation restated its offer because the Board had so vastly changed the terms of the deal the Foundation had agreed to assist in funding. By letter, the Hopedale Foundation told the Board that because "the original facts and circumstances have been or are in the process of being reworked" the Foundation was only willing to contribute the gift "to exercise an option to purchase 155.24 acres of land for a certain price". See Hopedale Foundation February 24, 2021 letter, attached hereto as **Exhibit 20**.

75. In the Agreement, the Board agrees to waive the Town's c. 61 first refusal rights in the Agreement.

76. The Board was not authorized to and cannot, as a matter of law, waive the Town's c. 61 first refusal rights.

77. Moreover, the Town Meeting voted to exercise its first refusal option, the Board ratified that vote and executed the recordation of the exercise of its first refusal option.

78. In the Agreement, the Board agrees to waive the Town's right to acquire any of the Property by eminent domain under Chapter 79.

79. The Board was not authorized to and cannot, as a matter of law, waive the Town's Chapter 79 eminent domain authority.

80. Moreover, the Town Meeting voted to take the Wetlands by eminent domain under Chapter 79.

81. In the Agreement, the Board also agrees to cover the rollback taxes owed by the Property owner in the event of a conversion of use from Forestland along with half of the costs of surveying the Property. There was no Town Meeting authorization for that expenditure.

82. In the Agreement, the Board agrees to additional encumbrances on the c. 61 Forestland that the Town would acquire, including several easements, not authorized by Town Meeting vote.

83. The Town Meeting vote authorized taking the 25.06 acres of the Wetlands by eminent domain for \$25,000.

84. In the Settlement, however, the Board agreed to include the Wetlands, for which the Railroad paid less than \$1.00, as part of the \$587,500 purchase price.

85. The Town Meeting vote discussed that the acquisition of the Property was for conservation and recreations of parkland.

86. The Town Meeting authorization of the acquisition of the Property, the Board's vote and the Town's recordation of the exercise of its first refusal option and the eminent domain taking established the Property as parkland, dedicated to the public use and protected under Article 97 against any change from parkland without a two-thirds vote of the Massachusetts Legislature.

87. The Board's purported agreement to transfer any portion of the Town's parkland Property to the Railroad is in violation of the prior public use doctrine and Article 97, which requires a two-thirds vote of the Legislature before converting parklands to a different use.

88. Plaintiffs were not aware of the Board's illegal actions until it released a Term Sheet on or about January 25, 2021. The Term Sheet called for the execution of a Settlement Agreement by February 9, 2021.

89. On February 7, 2021, the Plaintiffs sent the Board a Notice of Intent to Sue pursuant to c. 214, § 7A if it moved forward with executing the Settlement Agreement. The Attorney General was copied on the letter but has not responded.

90. On or about February 9, 2021, the Board executed the Settlement Agreement.

91. The Settlement Agreement requires the Board to make best efforts to close the contemplated transactions within 60 days of February 9, 2021, or April 10, 2021.

92. Accordingly, preliminary relief is required to prevent the illegal expenditures and property transfers contemplated by the Settlement Agreement.

COUNT I – AGAINST THE BOARD:
PRELIMINARY INJUNCTION TO ENJOIN AND RESTRAIN THE BOARD
(M.G.L. c. 40, § 53; c. 44 § 59; c. 214, § 3(10)) FROM ILLEGAL EXPENDITURES AND
OBLIGATIONS UNDER THE SETTLEMENT AGREEMENT

93. Plaintiffs incorporate the preceding paragraphs as if fully set forth herein.

A. The Board Illegally Agreed to the Town's Payment of more than \$587,500.

94. The Board agreed to and will soon spend more than \$587,500, an amount not specifically appropriated by Town Meeting.

95. The expenditure of more than \$587,500 for only 40 acres of the Forestland is a substantial change from the Town Meeting votes.

96. The expenditure is for a different amount, different acreage, higher price per acre, and for a different purpose than authorized and voted at Town Meeting.

97. The expenditure of \$587,500 is unauthorized by Town Meeting vote because the Town Meeting vote relied on the \$750,000 Hopedale Foundation gift, whose purpose was acquisition of 155.24 acres via the Town's first refusal option, and which was to fund half of the \$1,175,000 for the full acquisition.

98. On information and belief, the Board caused the Hopedale Foundation to rescind its offer of assistance because the Board entered into an unauthorized, starkly different Agreement.

99. On information and belief, the Board will imminently issue municipal bonds to make the payment of \$587,500 and the additional expenditures.

100. The Board had no discretion to substantially change the terms or purpose of the land acquisition as authorized at Town Meeting.

101. The expenditure of more than \$587,500 further violates Town of Hopedale Bylaw, § 79-3, pursuant to which the Finance Committee recommended purchase of the 155 acres for \$1,175,000 in its report at Town Meeting.

102. The Finance Committee approved a very different deal and does not even know how the Board intends to fund the more than \$587,500 acquisition.

103. Taxpaying Plaintiffs will be harmed by the Board's unauthorized expenditure of more than \$587,500.

104. The Board must be enjoined from spending more than \$587,500 as set forth in the Settlement Agreement.

B. The Board Illegally Agreed to Payments of Rollback Taxes, Survey Costs, and Hydrogeological Analysis.

105. The Board agreed to and will soon pay the rollback taxes that are owed to the Town by the Property owner pursuant to c. 61 upon a change in use from Forestland.

106. The Board agreed to and will soon pay half of the survey costs to divide the Property as set forth in the Concept Plan attached to the Settlement Agreement.

107. The Board agreed to and will soon pay half of the hydrogeological analysis costs to assess the viability of a well or wells on both the land to be owned by the Town and land to be owned by the Railroad under the Settlement Agreement.

108. These expenditures were not appropriated or authorized by Town Meeting vote and must be enjoined.

109. These expenditures by the Town are a very substantial change from the Town Meeting vote as none were discussed or considered at Town Meeting.

110. These expenditures are in further violation of Town Bylaw §§ 79-3; 79-8; and 49-7. because the Finance Committee has never reviewed these items.

111. On information and belief, the Board will imminently issue bonds to make these expenditures.

112. Taxpaying Plaintiffs will be harmed by the Board's unauthorized expenditures.

113. The Board must be enjoined from making these expenditures.

COUNT II – AGAINST THE BOARD AND THE RAILROAD:
DECLARATORY JUDGMENT AND ENFORCEMENT OF TOWN'S c. 61 RIGHTS
(M.G.L. c. 40, §§ 3 and 53; c. 214, § 3(10); c. 231A, §1)

114. Plaintiffs incorporate the preceding paragraphs as if fully set forth herein.

115. An actual controversy exists between the Plaintiffs and the Town and the Railroad over the Town's statutory first refusal option.

116. The Town effectively and fully exercised its c. 61 first refusal option and can purchase the Forestland subject to the July 9, 2020 notice of intent.

117. Even if the option is not effective because the Property owner's July 9, 2020 notice of intent was defective, the Town's c. 61 right of first refusal remained intact and was effectively exercised upon constructive notice of the Railroad's control of the Property.

118. The Railroad is estopped from denying the effectiveness of the Notice because it drafted the Notice and, in any event, the Town agrees to pay the \$1,175,000 price, rendering moot any issue as to any allocation of the price between the Forestland and the Wetlands.

119. Even if the option is not effective because there has been no notice, constructive or otherwise, of an intent to sell or convert the Forestland for another use, the Town's c. 61 rights remain enforceable against the Railroad.

120. Federal Railroad Preemption does not apply since state law property rights must first be determined.

121. The Board's purported release and waiver of the Town's c. 61 rights in the Settlement Agreement is not effective since those rights cannot be waived as a matter of law and there was no approval by Town Meeting to not exercise or waive those rights.

122. Therefore the c. 61 option deed recorded by Town can be enforced as to the 130.18 acres of c. 61 Forestland.

123. Similarly, easements in c. 61 Forestland granted under the Settlement but never approved by Town Meeting are void for the same reason.

124. The Board's purported waiver of the Town's c. 61 rights and interests in the land is an unlawful consideration, together with the payment of \$587,500 and other expenditures, under the Settlement Agreement.

125. Plaintiffs request a declaratory judgment that the Town's c. 61 rights remain enforceable against the Railroad and an order transferring title of all c. 61 Forestland to the Town without any easements.

126. Plaintiffs seek a further binding declaration that the Railroad is prohibited from taking any action or conducting any activities on or concerning the c. 61 Forestland which would result in any alienation of the c. 61 Forestland or any conversion of its current use as forest land until such time as this issue is fully and finally adjudicated.

127. Plaintiffs seek a further declaration that the Trust's assignment of 100% of its beneficial interest to the Railroad was equivalent to a transfer of title to the c. 61 Forestland and therefore constituted a sale of land taxed under c. 61 giving rise to a separate and independent first refusal option in the Town.

COUNT III – AGAINST THE BOARD:
USE OF c. 61 FORESTLAND FOR RAILROAD AND NON-PARKLAND PURPOSES IS
ILLEGAL HARM TO THE ENVIRONMENT
(M.G.L. c. 214, §§ 3(10) and 7A; c. 40, § 53; c. 45, § 7 AND MANDAMUS)

128. Plaintiffs incorporate the preceding paragraphs as if fully set forth herein.
129. The Settlement Agreement allows for unfettered Railroad use, buildings, and easements for non-forestland purposes on c. 61 Forestland.
130. These uses are also non-parkland uses.
131. This violates Article 3 as approved at Town Meeting that says the Forestland will be acquired for public parkland and placed under control of Parks Commission.
132. Town Meeting acceptance of the Property as public parkland creates parkland that is protected under Article 97 and that public use cannot now be changed without a 2/3 vote of Legislature under Article 97 and Town Meeting vote.
133. Failure to get 2/3 vote of the Legislature means sale and conversion of any portion of the Property to railroad use is harm to environment in violation of law intended to protect environment.
134. Construction of more than 600 feet of buildings on parkland as planned by the Railroad is in further violation of c. 45 § 7.
135. Plaintiffs seek a declaration that the Property has been dedicated to and accepted by the public as parkland and is protected under Article 97.
136. Plaintiffs also seek an order mandating that the Board comply with its affirmative obligation to treat and maintain the 130 acres as parkland.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court award the following relief:

- a. Preliminarily and permanently enjoin the Board from obtaining any bonds, making any expenditures, paying any costs, or transferring any property interests pursuant to the Settlement Agreement;
- b. Enter an order that the Town's c. 61 right of first refusal option as to the Forestland was effectively exercised, or in the alternative, that the first refusal option remains intact and has not been waived and is enforceable against the Railroad;
- c. Enter an order to transfer title of the Forestland to the Town, free and clear of any new easements or burdens described in the Settlement Agreement;
- d. Enter an order that the Town's eminent domain taking of the Wetlands is effective, is not preempted and order title to transfer to the Town, free and clear of any new easements or burdens described in the Settlement Agreement;
- e. Preliminarily and permanently enjoin the Railroad from taking any action nor conducting any activities on or concerning the c. 61 Forestland which would result in any alienation of the c. 61 Forestland or any conversion of its current use as forest land;
- f. Enter an order that the Property, including the Forestland and the Wetlands, is public parkland protected under Article 97 by public dedication and acceptance and prior public use and cannot, therefore, be converted to non-parkland use without a Town Meeting vote and the two-thirds votes of the Massachusetts Legislature;
- g. Enter an order that the Board treat and maintain the 130 acres of c. 61 land as parkland;
- h. Preliminarily and permanently enjoin the Railroad from constructing any buildings or conducting any activities on the Property that would harm the Article 97 parkland;
- i. Enter a judgment on each Count for the Plaintiffs;
- j. Award Plaintiffs their attorneys' fees and costs incurred in this action; and
- k. Grant such further relief as the Court deems just and proper.

Respectfully submitted,

ELIZABETH REILLY, CAROL J. HALL,
HILARY SMITH, DAVID SMITH,
DONALD HALL, MEGAN FLEMING,
STEPHANIE A. MCCALLUM, JASON A.
BEARD, AMY BEARD, SHANNON W.
FLEMING, and JANICE DOYLE

By their attorneys,

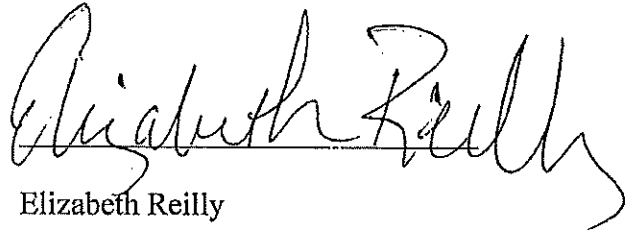


David E. Lurie, BBO# 542030
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One McKinley Square
Boston, MA 02109
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dlurie@luriefriedman.com
hracer@luriefriedman.com

Dated: March 3, 2021

VERIFICATION

I, Elizabeth Reilly, have read the above Verified Complaint and now state, under the penalties of perjury, that the facts stated therein are true to the best of my personal knowledge and that no material facts have been omitted.

A handwritten signature in cursive script that reads "Elizabeth Reilly". The signature is written in black ink and is positioned above the printed name.

Elizabeth Reilly

Dated: 3/3/24

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

ELIZABETH REILLY, CAROL J. HALL,)
DONALD HALL, HILARY SMITH,)
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STEPHANIE A. MCCALLUM,)
JASON A. BEARD, AMY BEARD,)
SHANNON W. FLEMING, and)
JANICE DOYLE,)

Plaintiffs,)

v.)

TOWN OF HOPEDALE, LOUIS J.)
ARCUDI, III, BRIAN R. KEYES,)
GRAFTON & UPTON RAILROAD)
COMPANY, JON DELLI PRISCOLI,)
MICHAEL MILANOSKI, and)
ONE HUNDRED FORTY REALTY)
TRUST,)

Defendants.)

Civil Action No.

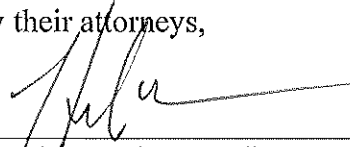
MOTION FOR APPOINTMENT OF SPECIAL PROCESS SERVER

Plaintiffs. hereby move, pursuant to Mass. R. Civ. P. 4(c), that this Court appoint Carol Wilkinson of Legal Support Services, 87 Wendell Street, Suite 200, Boston, Massachusetts 02110, as a qualified process server, for all purposes of this action.

The undersigned swears that to the best of his knowledge and belief, the person to be appointed is eighteen (18) years of age or over and it not party in this case.

ELIZABETH REILLY, CAROL J. HALL,
HILARY SMITH, DAVID SMITH,
DONALD HALL, MEGAN FLEMING,
STEPHANIE A. MCCALLUM, JASON A.
BEARD, AMY BEARD, SHANNON W.
FLEMING, and JANICE DOYLE

By their attorneys,



David E. Lurie, BBO# 542030
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Defendants.)

Civil Action No.

**PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

Pursuant to Mass. R. Civ. P. 65(b); M.G.L. c. 40, § 53, and c. 44, § 59, Plaintiffs request, following a hearing, a preliminary injunction to enjoin Defendant Hopedale Board of Selectmen (“Board”) from making illegal expenditures and transfers of land interests held by the Town of Hopedale (“Town”) which were not appropriated or authorized by Town Meeting.

On October 24, 2020, with the strong support and recommendations of the Finance Committee, the Conservation Commission, the Parks Commission and the Water and Sewer Commissioners, Town Meeting voted unanimously to exercise its right of first refusal under M.G.L. c. 61, § 8 to acquire 130.18 acres of undeveloped forestland (the “Forestland”) to

maintain and preserve the property for the use of the public for conservation and recreation purposes. Town Meeting appropriated the expenditure of \$1,175,000 to fund the acquisition of the 130.18 acres of Forestland. Town Meeting and, thereafter, the Board also accepted the commitment of a \$750,000 gift offered by the Hopedale Foundation, conditioned on the Town's exercise its option to purchase the entire Forestland, to assist the Town in funding the purchase. The Town recorded the exercise of its first refusal option with the Registry of Deeds.

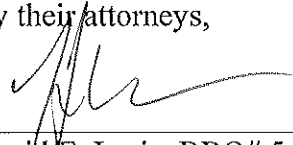
However, on February 9, 2021, as part of a Settlement Agreement between the Town and the Grafton & Upton Railroad (the "Railroad"), the Board instead improperly obligated, without authorization of a Town Meeting vote or Finance Committee review, the Town to pay the Railroad more than \$587,500 to purchase from the Railroad approximately a third of the Forestland, or 40 acres; agreed to pay land survey and hydrogeological survey costs; and agreed to release and waive the Town's c. 61 rights, leaving the remaining two-thirds (90 acres) of Forestland to be destroyed and developed into an industrial railyard. Each of these expenditures is in contradiction to and cannot be reconciled with Town Meeting authorization and must be enjoined as in violation of law and against public policy.¹ Plaintiffs rely on the facts as set forth in the Verified Complaint and exhibits attached thereto and their Memorandum of Support submitted herewith.

¹ 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 the 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.

Respectfully submitted,

ELIZABETH REILLY, CAROL J. HALL,
HILARY SMITH, DAVID SMITH,
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By their attorneys,



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Dated: March 3, 2021

COMMONWEALTH OF MASSACHUSETTS

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SUPERIOR COURT DEPARTMENT
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Plaintiffs,)

v.)

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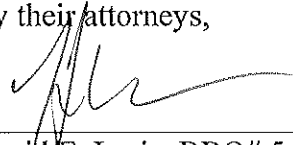
However, on February 9, 2021, as part of a Settlement Agreement between the Town and the Grafton & Upton Railroad (the "Railroad"), the Board instead improperly obligated, without authorization of a Town Meeting vote or Finance Committee review, the Town to pay the Railroad more than \$587,500 to purchase from the Railroad approximately a third of the Forestland, or 40 acres; agreed to pay land survey and hydrogeological survey costs; and agreed to release and waive the Town's c. 61 rights, leaving the remaining two-thirds (90 acres) of Forestland to be destroyed and developed into an industrial railyard. Each of these expenditures is in contradiction to and cannot be reconciled with Town Meeting authorization and must be enjoined as in violation of law and against public policy.¹ Plaintiffs rely on the facts as set forth in the Verified Complaint and exhibits attached thereto and their Memorandum of Support submitted herewith.

¹ 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 the 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.

Respectfully submitted,

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By their attorneys,



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Dated: March 3, 2021

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

_____)
 ELIZABETH REILLY, CAROL J. HALL,)
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 JANICE DOYLE,)
)
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 v.)
)
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 GRAFTON & UPTON RAILROAD)
 COMPANY, JON DELLI PRISCOLI,)
 MICHAEL MILANOSKI, and)
 ONE HUNDRED FORTY REALTY)
 TRUST,)
)
 Defendants.)
 _____)

Civil Action No.

**PLAINTIFFS' MEMORANDUM IN SUPPORT OF THEIR MOTION FOR
PRELIMINARY RELIEF**

Pursuant to Mass. R. Civ. P. 65(b), M.G.L. c. 40, § 53 and c. 44, § 59, Plaintiffs submit this Memorandum in Support of their Motion for Preliminary Injunction to enjoin Defendant Hopedale Board of Selectmen ("Board") from making illegal expenditures and transfers of land interests held by the Town of Hopedale ("Town") which were not appropriated or authorized by Town Meeting.

At one of the most well attended Town Meetings in the Town's history and with the strong support and recommendations of the Finance Committee, the Conservation Commission,

the Parks Commission and the Water and Sewer Commissioners, the Town Meeting voted unanimously to exercise its right of first refusal under M.G.L. c. 61, § 8 to acquire 130.18 acres of undeveloped forestland (the “Forestland”) to maintain and preserve the property for the use of the public for conservation and recreation purposes. Town Meeting appropriated the expenditure of \$1,175,000 to fund the acquisition of the 130.18 acres of Forestland. Town Meeting and, thereafter, the Board also accepted the commitment of a \$750,000 gift offered by the Hopedale Foundation, conditioned on the Town’s exercise of its option to purchase the entire Forestland, to assist the Town in funding the purchase.

Three months later, the Board illegally entered into, without Town Meeting approval, a Settlement Agreement (the “Settlement Agreement”) with the Grafton & Upton Railroad (the “Railroad”) that: wildly diverged from what Town Meeting authorized and appropriated; is antithetical to the purpose of the Town Meeting’s vote and the Hopedale Foundation gift; and includes substantial, unauthorized expenditures by the Board. Instead of acquiring for continued conservation the 130.18-acre Forestland, to which the Town retains a perfected exercise of its option, the Board improperly agreed to: waive the Town’s c. 61 right of first refusal; give the Railroad two-thirds (90+/- acres) of the Forestland to be cleared and developed into an industrial railyard; and pay the Railroad more than \$587,500 for a 40-acre sliver of the Forestland which surrounds a 25-acre wetland. None of these expenditures or transfers of the Town’s property interests was authorized by Town Meeting. Each is in direct contradiction with what Town Meeting unanimously authorized. On February 24, 2021, the Hopedale Foundation rescinded its offer of financial assistance because the Board entered into such a starkly different deal. VC, Ex. 20. The Board wants the Town to pay for the Forestland’s utter destruction.

The Board's abuse of authority, in defiance of the legislative intent, authorization and appropriation of Town Meeting, must be enjoined and restrained. Plaintiffs respectfully request that this Court enjoin the Board from taking any steps to issue bonds, expend funds or further transfer or alienate any of the Town's property interests as illegal expenditures, as set forth in Count I of the Verified Complaint.¹ Only with this preliminary relief can the public interest be preserved, that is, the Town's interest in preserving all 130.18 acres of Forestland which it voted unanimously to protect as parkland for future generations, not abandon to the Railroad for industrial development.

FACTUAL BACKGROUND²

The Town and the Railroad each sought to acquire 155 acres of undeveloped property at 364 West St., Hopedale (the "Property"). VC, ¶¶ 18, 19. Of the 155-acre Property, 130.18 acres have been classified as forestland (the "Forestland") under M.G.L. c. 61 for nearly 30 years. ¶¶ 14, 15. The Town intended to preserve the Property, which is contiguous with the 279-acre Town-owned Hopedale Parklands, as parkland for conservation and recreation and as a potential location for a much-needed municipal water supply. ¶¶ 44, 49. The Railroad, on the other hand, intended to raze the Forestland and construct an industrial railyard on the Property.³ ¶ 20.

¹ Plaintiffs bring additional claims in this action, including to enforce 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. VC, Counts II and III. This Motion is only as to the 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.

² The procedural background and facts are as set forth in the Verified Complaint (cited herein as "VC ¶ ___" or "¶ ___").

³ The Railroad made several attempts to acquire the Property to avoid triggering the Town's c. 61 first refusal option. VC, ¶¶ 20-22. The Railroad first tried to acquire the Property through an eminent domain taking at the Department of Public Utilities and then some portion of it through a public-private partnership with the Town. Id. Each effort failed. Id.

On July 9, 2020, the Railroad entered into a Purchase and Sale Agreement with the Property owner and provided the Town with a Notice of Intent, as required under c. 61, to sell the Property for \$1,175,000. VC, Ex. 3.⁴ The Town took all necessary steps to perfect the exercise of its first refusal option within the statutory 120 days. §§ 27, 32, 40 -46, 49, 51. The Town informed the Property owner and the Railroad that it was considering exercise of its first refusal option. § 27. The Hopedale Foundation stepped forward with financial support if the Town of Hopedale decided to exercise its option to purchase the Property. VC, Ex. 5. On September 10, 2020, the Hopedale Finance Committee presented its Due Diligence Report on the financial impact of the Town's exercise of its first refusal option to purchase the Forestland, strongly recommending that the Town exercise its option. VC, Ex. 8. The Hopedale Foundation then detailed the terms of its offer to assist the Town in exercise of its option to purchase the Property, that it would grant the Town seven hundred and fifty thousand dollars (\$750,000) to be paid in increments of fifty thousand dollars (\$50,000) per year for a period of fifteen years. VC, Ex. 10. On October 22, 2020, environmental consultants for the Water and Sewer Commissioners reported that the Property is critical to the protection of the Town's watershed and potential water supply expansion but that development of a new well would require the Town's control and conservation of the Property. VC, § 41; Ex. 2.

On October 24, 2020, a Special Town Meeting was attended in person (despite Covid-19) by over 400 citizens of Hopedale. Article 3 of the Town Meeting Warrant presented the following question:

To see if the Town will vote to acquire, by purchase or eminent domain, certain property, **containing 130.18 acres**, more or less, located at 364 West Street . . .

⁴ The remaining 25 acres of the Property are wetlands that run through a portion of the Forestland (the "Wetlands"). See map of Property, VC, Ex.1. The Property is indicated on Ex. 1 as the orange area in the center of the map. The dark shaded area in the southeast portion of the Property is the Wetlands, the non-shaded portion is the Forestland.

and in order to fund said acquisition, raise and appropriate, transfer from available funds, or borrow pursuant to G.L. c. 44, §7, or any other enabling authority, a sum of money **in the amount of One Million One Hundred and Seventy-Five Thousand Dollars (\$1,175,000.00)**, and to apply any discretionary grants, gifts, awards, or donations of money given to the Town for the purpose of land conservation, said property **being acquired pursuant to a right of first refusal in G.L. c. 61, §8**, which right is subject to exercise by a vote of the Board of Selectmen, **such acquisition to be made to maintain and preserve said property and the forest, water, air, and other natural resources thereon for the use of the public for conservation and recreation purposes** to be managed under the control of the Hopedale Parks Commission, and further 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; or take any action related thereto.

See Special Town Meeting Minutes, VC, Ex. 12 (emphasis added). Members of the Town spoke overwhelmingly in favor of acquiring the 130.18 acres of Forestland for use by the public for conservation and recreation purposes. ¶ 45. The Finance Committee recommended approval of Article 3 and informed the Town Meeting of the Hopedale Foundation's gift offer. Id. Chairs of the Conservation Commission and Water and Sewer Commissions all spoke in favor of Article 3. Id. Board Chairman Brian Keyes moved to appropriate \$1,175,000, less amounts received by gift, to acquire the 130.18-acre Forestland and the motion passed unanimously. ¶ 46.

On October 30, 2020, the Board voted to exercise the Town's first refusal option to acquire the entire Forestland, consistent with the Town Meeting warrant vote. VC, ¶ 49. The Board thanked the Hopedale Foundation for its donation and publicly confirmed that the vote "is for the acquisition of the land [] for public conservation and is consistent with Article 97 [. . .] [and] that once this land is moved into Article 97, the town would need a 2/3rds vote from Massachusetts Legislature to change this." Id.; Ex. 13.

On November 2, 2020, the Town recorded notice of the exercise of its first refusal option in the Worcester South District Registry of Deeds, (VC, Ex. 14), thus perfecting the Town's

exercise to acquire the Forestland for conservation and recreation for \$1,175,000, in full harmony with the Town Meeting authorization.

Meanwhile, the Railroad was making a series of illegal maneuvers to seize control of the Property and strip the Town of its c. 61 rights. The Railroad first purported to withdraw the July 9, 2020 Notice of Intent on October 7, 2020.⁵ VC, Ex. 6. On October 12, 2020, the entire beneficial interest of the Forestland was assigned to the Railroad for \$1,175,000; the prior trustees of the Trust Property owner resigned and named Railroad defendants Jon Delli Priscoli and Michael Milanoski as the new trustees; and the prior trustees sold to the Railroad the Property's 25.06 Wetlands that are surrounded by the Forestland plus an additional 20-acre parcel on the opposite side of West Street for one dollar (\$1.00). ¶¶ 33-36. Thereafter, the Railroad began land clearing activities on the Property. ¶ 50.

On October 28, 2020, the Town sued the Railroad in Land Court in the action styled Town of Hopedale v. Jon Delli Priscoli Trustee of the One Hundred Forty Realty Trust, et al., 20 MISC 000467. The Town sought a judicial order that the Notice could not be withdrawn and that even if the July 9, 2020 Notice was defective, the Railroad's purchase of the beneficial interest in the Property was an independent trigger of the Town's first refusal option, which the Town validly exercised by unanimous Town Meeting vote, Board of Selectmen vote, and recording of the Notice of Exercise. VC, ¶ 50. The Town also moved to enjoin the Railroad's Forestland clearing. Id. The Land Court denied the Town's request for a preliminary injunction in a narrow docket order finding that the Town is entitled to a right of first refusal but that it was

⁵ The Town informed the Railroad, which drafted and signed the Notice for the Property owner, that the Notice was defective because it included non-Forestland in the purchase price and sought clarification from the Railroad. VC, Ex. 4. The Town also informed the Railroad that the Town's c. 61 option, once triggered, cannot be withdrawn. VC, Ex. 7.

unclear at that time whether or when that right had triggered or ripened.⁶ VC, ¶ 57. The Land Court did not need to resolve this issue for purposes of the injunction because it also found no risk of harm based on the Railroad's representations that no further land clearing would occur.

In January 2021, the Town and the Railroad engaged in two sessions of mediation, culminating in a Term Sheet revealed to the Town for the first time at a January 25, 2021 Board meeting. Despite ongoing community opposition, the Board voted to approve the Term Sheet and executed the Settlement Agreement on February 9, 2021. VC, Ex. 19. The Settlement Agreement anticipates a closing of the transactions, including issuance of bonds to fund the \$587,500 payment to the Railroad, within 60 days, i.e., by April 10, 2021. *Id.*, § 1(a).

The expenditures and land interest transfers in the Settlement Agreement are starkly different from and cannot be reconciled with the Town Meeting authorization. In contrast to Town Meeting authorization, the Board, if not enjoined, will expend \$587,500 in exchange for a much smaller (40 acre) segment of the 130.18 acres of Forestland. The 40 acres that the Board agreed to pay \$587,500 for is essentially a narrow buffer surrounding the Wetlands, which would be given to the Town under the Agreement.⁷ Exhibit 1 to VC, Ex. 19, § 1. The Board agreed that 90 acres of the Forestland – more than two-thirds of it – would become industrial wasteland. Ex. 19, §§ 1(b), (c), (e). In other words, there is little recreational value in a 40-acre buffer

⁶ The Land Court found that the July 9, 2020 Notice of Intent was defective because it included in the purchase price land not subject to c. 61, namely the Wetlands and the 20-acre parcel across the street. VC, Ex. 16. The Court stated that the Parties subsequent course of dealing was unclear, including whether and when a subsequent constructive notice of intent occurred based on the Railroad's acquisition of the beneficial interest in the Forestland, and whether federal railroad preemption trumped the Town's c. 61 rights. *Id.* The Land Court did not reach these issues and this Court need not reach them now. Regardless, the Railroad's preemption claim is fictional because the Railroad's suspect transfers of property interests do not trump or extinguish the Town's c. 61 rights. VC, Exs. 11, 18.

⁷ Town Meeting also approved Article 5, to take by eminent domain the 25-acre Wetlands. The Board voted to do the same and recorded that taking as well. VC, Exs. 13, 14. In the Verified Complaint, Plaintiffs seek to enforce the taking of the Wetlands. VC, Prayer for Relief.

around a wetland where the rest of the surrounding Property will be destroyed. Exhibit A to VC, Ex. 19. The Board also agreed to fund the “rollback” taxes owed for the Forestland, as well as half the survey and engineering costs contemplated under the Settlement Agreement. VC, Ex. 19, §§ 1(ii), (iii), (v), (vi), (viii). When the details of the Board’s Agreement became public, the Hopedale Foundation, aghast, withdrew its gift because it was wholly inconsistent with the Foundation’s purpose and Town Meeting authorization. VC, Ex. 20. The Board is now seeking to indebt the Town through bonding pursuant to the unauthorized Settlement Agreement.

Accordingly, preliminary relief is required to prevent the Board’s illegal expenditures and property interest transfers as set forth in the Settlement Agreement. The public interest demands preservation of the entire parkland which Town Meeting unanimously voted to protect.

ARGUMENT

I. STANDARD FOR PRELIMINARY INJUNCTION UNDER M.G.L. c. 40, § 53

Plaintiffs bring their claims under the ten-taxpayer statute that explicitly authorizes the grant of preliminary relief to “restrain the unlawful exercise or abuse of such corporate power.” M.G.L. c. 40, § 53. “The words of the statute 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. City of Boston, 408 Mass. 643, 646 (1990). Thus, where a suit is brought by citizens acting as private attorneys general to enforce a statute, Plaintiffs need not show any harm, rather, the Court must determine “that the requested order promotes the public interest, or alternatively, that the equitable relief will not adversely affect the public.” Taxpayer Grp. v. City of Fall River Redevelopment Auth., No. BRCV20101277, 2010 WL 5573723, at *3 (Mass. Sup. Ct. Oct. 28, 2010) (redevelopment authority preliminarily enjoined pursuant to c. 40, § 53 from conveying property for casino use in violation of statute); see also

Town Adm'r Screening Comm. of Town of Webster v. Bd. of Selectmen of Town of Webster, No. 051795, 2005 WL 2864795, at *2 (Mass. Sup. Ct. Oct. 7, 2005) (Board enjoined from entering into a three-year contract with a new Town Administrator, in violation of Town Charter requirements, because it would incur obligations for purposes of c. 40, § 53). Indeed, “[m]erely finding a likely statutory violation which adversely affected the public interest [is] sufficient.” Edwards, 408 Mass. at 647.

II. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS OF COUNT I AND SHOW THAT THE BOARD’S EXPENDITURES ARE SUBSTANTIALLY INCONSISTENT WITH TOWN MEETING VOTE AND INTENT AND ARE, THEREFORE, UNAUTHORIZED AND ILLEGAL.

A. Legal Standard

Chapter 40, § 53 provides a mechanism for taxpayers to enforce laws relating to the expenditure of tax money by the local government. Edwards, 408 Mass. at 646. All Town expenditures must be approved by appropriation at Town Meeting and c. 40, §53 empowers the taxpaying Plaintiffs to enforce the Town’s appropriation power and restrain illegal and unauthorized expenditures by the Board. See M.G.L. c. 44, §§ 31 (“No department financed by municipal revenue, or in whole or in part by taxation . . . shall incur a liability in excess of the appropriation made for the use of such department . . . each item voted by the town meeting in towns, being considered as a separate appropriation”); 53 (“Any sums so paid into the city, town or district treasury shall not later be used by such officer or department without specific appropriation thereof”); 59 (“superior court, by mandamus or other appropriate remedy, at law or in equity, upon the suit . . . of one or more taxable inhabitants of a city, town . . . may compel such city, town or district, and its assessors, collectors, treasurers, commissioners of sinking funds and other proper officers, to conform to this chapter.”).

Where appropriations are to be used for different, unauthorized purposes, contracts for such expenditures are likewise unauthorized and are null and void. Pursuant to c. 44 § 31, a town's contractual liability is strictly limited to the prior amount appropriated for the particular contract, and any contract made by a town's board of selectmen without a specific appropriation to support it is invalid. Govoni v. Town of Acushnet, No. 9401119, 1995 WL 1146894, at *3 (Mass. Sup. Ct. Nov. 17, 1995).

B. The Board's payment of more than \$587,500 for a fraction of the total Forestland, leaving twice as much to be sacrificed for industrial Railroad development, was not authorized by Town Meeting approval and must be enjoined.

i. The Board's expenditures are substantially different from Town Meeting appropriation.

The material facts are not in dispute, including that the Board's contractual obligations are substantially inconsistent with Town Meeting authorization. Town Meeting unanimously authorized expenditure of specific amount, subject to a specific gift and funding structure, for a specific Property, and for a specific purpose. VC, Ex. 12. The purpose of the Town Meeting appropriation of \$1,175,000, offset by the Foundation gift and premised on the Finance Committee report, was to acquire all 130 acres of Forestland through the Town's exercise of its statutory first refusal option and to dedicate it as public parkland. ¶¶ 44, 49. The Board agreed to expend a substantially different amount, now without the benefit of the Foundation gift, for a third of the Forestland surrounded by an industrial, developed railyard on the other 90 acres. VC, ¶¶ 66, 71, 73, 82. Indeed, the approximate cost per acre of Forestland that was authorized is \$9,026; the Board agreed to pay \$14,687.50 per acre of Forestland. ¶ 69. Instead preserving the 130.18 acres of Forestland as authorized at Town Meeting and provided for by statute, the Board

would pay an unauthorized \$587,500 for a slice of Forestland wedged between the Wetlands and an industrial railyard.⁸

The expenditure for a starkly different amount, acreage, price per acre, and purpose than authorized and voted at Town Meeting is illegal.⁹ See Faneuil Investors Group v. Board of Selectmen of Dennis, 458 Mass. 1, 9 (2010) (“the board may not include a provision that differs in substantial respect from that which the town meeting approved”); Murphy v. City of Brockton, 364 Mass. 377, 380 (1973) (“rigid barriers against expenditures in excess of appropriations” of c. 44, § 31 barred continuation of unfunded contract and from using funds to construct a school where appropriation was for school renovation); City of Salem v. Attorney Gen., 344 Mass. 626, 631 (1962) (construction of school barred because it would be “at variance with the use for which the city holds the land, it impairs the obligation of the contract and affords no right to the school committee to use the land for school purpose”); City of Lawrence v. Stratton, 312 Mass. 517, 522 (1942) (deed conveying city property held invalid where mayor changed terms approved by city council from the payment of \$50,000 to \$40,000); Breckwood Real Estate Co. v. City of Springfield, 258 Mass. 111, 114–15 (1927) (statutes with the purpose of protecting expenditure of public funds unless and until appropriation of such funds had been previously

⁸ The Railroad has developed industrial facilities largely free of state and local regulation, using federal preemption as a cudgel, in downtown Hopedale (fly ash storage and distribution) as well as Upton (wood pellet processing and other dry and liquid product transloading), North Grafton (liquid propane) and Milford (steel transloading and fabrication). See <http://graftonuptonrr.com/about-us/>; <https://www.telegram.com/article/20150926/NEWS/150929262>; <https://www.wbjournal.com/article/mcgovern-joins-grafton-bid-to-halt-rail-lines-propane-hub>.

⁹ The Board’s agreement is not merely for the Town to acquire a slightly smaller portion of property for a pro rata amount while remaining consistent with the Town Meeting’s authorization. Cf. Russell v. Town of Canton, 361 Mass. 727, 732 (1972). There, Town Meeting voted to take for a town dump 20 acres and appropriated funds to acquire “approximately 18 acres”, each of which was more than the 16.75 acres of land at issue. The town took all but 1.5 acres, which were found to be unusable as a dump due to a rock ledge. The court held, in the private landowner suit, that under those specific facts, Town Meeting’s authorization allowed for the slightly lesser, justified taking. Unlike Russell, here, Town Meeting was exceedingly clear that the authorization was to exercise the Town’s right of first refusal and acquire the entire Forestland and the Board did just that before reversing course.

authorized must “proceed in specified way and conferring power only upon the condition of compliance with that mandate”); Reed v. City of Springfield, 258 Mass. 115, 118 (1927) (no validity to recordation of deed where the city council did not authorize taking according to statute even though cost was appropriated).

Moreover, the Board also agreed to pay the rollback taxes owed by the Property owner in the event of a conversion from use from Forestland, half of the costs of surveying the Property for division and half of the costs of hydrogeological surveying on both the Railroad’s and the Town’s portions of the Property. The Board further agreed to additional encumbrances on the c. 61 Forestland that the Town would acquire, including several easements. VC, Ex. 19 §§ 1(a)(i), (a)(iii). There was no Town Meeting authorization for any of these expenditures or transfers and they must be enjoined. Cranberry Growers Serv., Inc. v. Town of Duxbury, 415 Mass. 354, 355 (1993) (“In the absence of town meeting vote authorizing the transaction, a town conservation commission has no authority to lease premises under its charge, even if the lease restricts use of the premises to conservation purposes.”); Peters v. City of Medford, 295 Mass. 588, 591–92 (1936) (where licensing board had no power to make the expenditure beyond the appropriations previously voted, “any indebtedness incurred by the licensing board in excess of its appropriation is illegal and void”); Harris v. Town of Wayland, 16 Mass. App. Ct. 583, 587 (1983) (unless qualified by other statutes, a majority vote of a town is necessary to grant an easement or convey any other interest in land).

ii. The Board’s substantial changes are far beyond its discretion.

The incongruent purpose of the expenditures cannot be justified as discretionary acts where there was no authorization whatsoever for the change in purpose of the appropriations. Murphy, supra (“Section 31 is designed to have the salutary effect of preventing the unlawful

expenditure of public funds for public contracts and we would be loath to expand any exception to its operation.”); City Council of Boston v. City of Boston, 386 Mass. 171, 181 (1982) (court affirmed taxpayer request for an injunction where the subject transfers were a "substantial change in appropriations" that had to be approved by two thirds of the council); Govoni, 1995 WL 1146894, *3 (“[A]ny contract made by a town’s board of selectmen without a specific appropriation to support it is invalid.”); Gloucester Fire Fighters, Local 762, Int’l Ass’n of Fire Fighters v. City of Gloucester, 8 Mass. App. Ct. 106, 110 (1979) (“To appropriate money, or anything else, is to set it apart or assign it to a particular use or purpose.”) (internal citation omitted).

Moreover, to the extent the Board suggests that its discretion is greater or expanded beyond what Town Meeting authorizes because it was a named party to litigation, it is not. Even when the contract containing unauthorized expenditures is the product of a negotiated settlement of litigation, such agreement is an invalid abuse of authority subject to restraint. See, e.g., Stevens v. Zoning Bd. of Appeals of Bourne, 97 Mass. App. Ct. 713, 716 (2020) (settlement agreement entered into by board of selectmen was null and void because it ran afoul of “the detailed procedural safeguards embedded” of c. 40A, because, like c. 40, § 53, the statute is to protect against the overreach of authority by municipal boards); Daly v. McCarthy, No. 01-0027, 2003 WL 25332929 (Mass. Sup. Ct. Aug. 04, 2003) (court invalidates settlement agreement entered into by board of selectmen and private trust where the board agreed to change the agricultural preservation restriction of property where ten taxpayers brought suit to enforce the purpose of agricultural preservation gift).

iii. The Board illegally waived and released the Town's c. 61 rights without Town Meeting authorization.

The Board purported to waive the Town's c. 61 first refusal option entirely. This despite the approval and direction to exercise that right by a unanimous Town Meeting, the Finance Committee, the Conservation Commission, the Water and Sewer Commission, the Hopedale Foundation and the Board itself. The Board cannot waive and release the Town's first refusal option, a property interest, after the Town Meeting authorized and the Town exercised that option because a subsequent Town Meeting vote would be needed for release of c. 61 rights. See Pierce v. Clark, No. BACV200100496, 2005 WL 1009533, at *1 (Mass. Sup. Ct. Mar. 18, 2005), aff'd, 66 Mass. App. Ct. 912 (2006) (town meeting voted to release c. 61 rights); Bowers v. Board of Appeals of Marshfield, 16 Mass. App. Ct. 29 (1983) (settlement by a board of selectmen providing easements was beyond the authority of the selectmen and in violation of c. 40A, § 3 because it had not been approved by Town Meeting); Town of Lunenburg v. Alleva, No. 308492, 2007 WL 2069896, at *1 (Mass. Land Ct. July 20, 2007) (town meeting authorizes settlement involving exchange of easement).¹⁰

¹⁰ The Town's c. 61 rights remain enforceable and Plaintiffs have brought claims in this action to enforce those rights. See, e.g., Town of Sudbury v. Scott, 439 Mass. 288, 298 (2003) (under similar c. 61A, "[i]f a sale for nonagricultural use is consummated without such notice to the town, then the town's right of first refusal endures"); Stapleton v. Macchi, 401 Mass. 725, 729 n.6 (1988) ("An option is simply an irrevocable offer creating a power of acceptance in the optionee."); Town of Billerica v. Card, 66 Mass. App. Ct. 664, 669 (2006) ("The option vests in the town as soon as it received a notice of intent, and any purported subsequent withdrawal of the notice can have no effect."); Plante v. Hennessy, No. CA 990593, 2000 WL 537294, at *5 (Mass. Sup. Ct. Feb. 16, 2000), aff'd sub nom. Plante v. Town of Grafton, 56 Mass. App. Ct. 213 (2002) ("Town's rights of first refusal cannot be defeated or artificially burdened by lumping the two parcels together and insisting that the Town take all or nothing."); Town of Brimfield v. Caron, No. 06 MISC 331899 KCL, 2010 WL 94280, at *9 (Mass. Land Ct. Jan. 12, 2010) (enforcing town's c. 61 first refusal option), after trial, 2015 WL 5008125 (2015) (ruling that Town had right to purchase forest lot for \$186,500); Hingham Land, LLC v. Town of Rockland, No. 299022, 2005 WL 3498342, at *15 (Mass. Land Ct. Dec. 21, 2005) (enforcing Town's first refusal option).

iv. The Board's failure to obtain Finance Committee review of the new and substantially different expenditures are in violation of Hopedale General Bylaw.

The expenditure of more than \$587,500 further violates Town of Hopedale Bylaw, § 79-3, pursuant to which the Finance Committee recommended purchase of the Property for \$1,175,000 in its report at Town Meeting. The Finance Committee approved a very different deal and does not even know how the Board intends to fund the more than \$587,500 acquisition costs, particularly since the Board squandered away the Hopedale Foundation gift. Without the Foundation gift for the purpose of conservation of the Forestland and parkland, which could not be used for Railroad development, the amount being spent by the Board exceeds any authorization. The local bylaws for the Finance Committee were not followed warranting an injunction here. See Town of Hopedale Zoning Bylaws §§ 79-3 (“The Finance Committee shall consider all Articles and Warrants for all Town Meetings and Referenda and shall report its recommendations before each meeting or vote in print or at a public meeting for that purpose.”); and 79-8 (“The Finance Committee shall review and make a recommendation on all contracts exceeding the amount set forth in § 49-7 of Chapter 49, Contracts; Procurements, and shall conform to the procedures outlined in said section.”); see also Loring v. Inhabitants of Town of Westwood, 238 Mass. 9, 11 (1921) (ten taxpayer action challenging wrongful expenditure valid, injunction appropriate, where even though town meeting had approved funds, local bylaw was not followed prior to the town meeting vote).

III. A PRELIMINARY INJUNCTION IS IN THE PUBLIC INTEREST

An injunction against the unauthorized expenditures is warranted and consistent with the public policy as enumerated in M.G.L. c. 40, § 53 and with the Legislative intent of the unanimous Town Meeting authorization. Indeed, an injunction would not be adverse to any

public policy because the Board is “obliged to proceed no further with its work under the contract than was covered by an appropriation [and] [a]ny delay resulting from this limitation would be an inconvenience necessary to enforce the vital policy of c. 44, s 31, to set rigid barriers against expenditures in excess of appropriations.” Murphy v. City of Brockton, 364 Mass. at 380. Accord Edwards, supra; Webster, supra; Stevens, supra. Issuance of the injunction would not harm the Town, but rather would promote the public interest since the contract is void without Town Meeting authority and allowing the payments and issuance of deed with reserved easements would further complicate matters and not be in the public interest. See Fall River, 2010 WL 5573723, at *4 (“issuance of a preliminary injunction does not affect the public interest adversely and, in fact, promotes the public interest” where city argued that contract, in violation of statute, would promote public interest as a job creator).

It is a fiction to suggest that paying \$587,500 for 40 acres is in the public interest when the public unanimously expressed that its interest was in the preservation of the whole 130 acres for parkland and the Town retains its first refusal option to purchase the entire 130 acres. Paying the \$587,500, land survey costs and rollback taxes would allow the deal to go forward and undercut preservation of the whole for parkland against Railroad development. It is not in the public interest for the Town to acquire just some acreage under an illegal agreement.

On the other hand, it is very much in the public interest to get 130 acres for parkland as voted by the Town. The only way that can happen is if an injunction issues before closing so that Plaintiffs can then resolve the Town’s c. 61 rights without part of the Settlement having been performed. Allowing the illegal expenditures would make things substantially more difficult to fix later and will not preclude the Town from obtaining the land on which it has already recorded a perfected option. “It also serves the public interest to allow the town to extricate itself from the

agreement without being subject to liability under the contract” particularly where no payments have issued and no work under the Agreement has commenced. Baltazar Contractors, Inc. v. Town of Lunenburg, 65 Mass. App. Ct. 718, 723 (2006).

Although not required for the injunctive relief requested here, Plaintiffs, as taxpayers and as beneficiaries of public parkland will be harmed by the Board’s unauthorized expenditures if not enjoined. Plaintiffs respectfully request that the Court approve their Motion and endorse the Proposed Order submitted herewith.

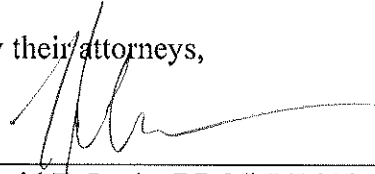
CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court allow their Motion for Preliminary Injunction and endorse the Proposed Order submitted herewith to enjoin the Board from obtaining any bonds, making any expenditures, paying any costs, including without limitation, for land or hydrogeological surveying, or transferring any property interests pursuant to the Settlement Agreement.

Respectfully submitted,

ELIZABETH REILLY, CAROL J. HALL,
HILARY SMITH, DAVID SMITH,
DONALD HALL, MEGAN FLEMING,
STEPHANIE A. MCCALLUM, JASON A.
BEARD, AMY BEARD, SHANNON W.
FLEMING, and JANICE DOYLE

By their attorneys,



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Dated: March 3, 2021

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

ELIZABETH REILLY, CAROL J. HALL,
DONALD HALL, HILARY SMITH,
DAVID SMITH, MEGAN FLEMING,
STEPHANIE A. MCCALLUM,
JASON A. BEARD, AMY BEARD,
SHANNON W. FLEMING, and
JANICE DOYLE,

Plaintiffs,

v.

TOWN OF HOPEDALE, LOUIS J.
ARCUDI, III, BRIAN R. KEYES,
GRAFTON & UPTON RAILROAD
COMPANY, JON DELLI PRISCOLI,
MICHAEL MILANOSKI, and
ONE HUNDRED FORTY REALTY
TRUST,

Defendants.

Civil Action No.

PROPOSED ORDER ON PLAINTIFFS’ REQUEST FOR PRELIMINARY RELIEF

After a hearing on the Plaintiffs’ Motion for Preliminary Injunction, the following Order of the Court shall enter:

1. Plaintiffs’ Motion for Preliminary Injunction is allowed as follows. Defendant Hopedale Board of Selectmen (“Board”) is enjoined 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 the Settlement Agreement dated February 9, 2021, entered into with the Grafton and Upton Railroad (the “Railroad”).

2. This Order shall remain in effect until:

- a. There is a final judicial determination of the claims brought by Plaintiffs in their Verified Complaint; or
 - b. Further Order of the Court.
-

March __, 2021

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

ELIZABETH REILLY, CAROL J. HALL,)	
DONALD HALL, HILARY SMITH,)	
DAVID SMITH, MEGAN FLEMING,)	
STEPHANIE A. MCCALLUM,)	
JASON A. BEARD, AMY BEARD,)	
SHANNON W. FLEMING, and)	
JANICE DOYLE,)	
)	
Plaintiffs,)	
)	Civil Action No.
v.)	
)	
TOWN OF HOPEDALE, LOUIS J.)	
ARCUDI, III, BRIAN R. KEYES,)	
GRAFTON & UPTON RAILROAD)	
COMPANY, JON DELLI PRISCOLI,)	
MICHAEL MILANOSKI, and)	
ONE HUNDRED FORTY REALTY)	
TRUST,)	
)	
Defendants.)	

PLAINTIFFS' MOTION FOR SHORT ORDER OF NOTICE

Plaintiffs move the Court for a short order of notice to schedule a hearing in five days (March 8, 2021), or as soon thereafter as is convenient for the Court, on their Motion for Preliminary Injunction against defendant Hopedale Board of Selectmen ("Board"). The Motion and Memorandum In Support are being filed herewith. Plaintiffs rely on the Verified Complaint, and the Memorandum In Support of Preliminary Relief filed in this action and further state as follows:

1. The Board is moving forward to issue bonds for and make illegal expenditures without authorization of Town Meeting in violation of M.G.L. c. 40, § 53 and c. 44, § 59.

2. Under the terms of a Settlement Agreement invalidly entered into with the Grafton & Upton Railroad Company (the "Railroad"), the Board has, without authority, agreed to may payment of \$587,500 and granted easements to the Railroad by April 10, 2021.

3. Under the terms of the Settlement Agreement, the Board has, without authority, agreed to pay rollback taxes under c. 61 and to share the costs of surveying land for division.

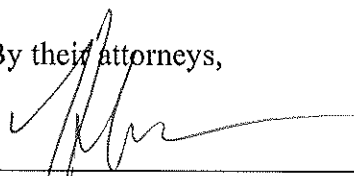
4. Under the terms of the Settlement Agreement, the Board has, without authority, agreed to release and waive the Town's property interest in a statutory right of first refusal pursuant to M.G.L. c. 61, §8, even though the exercise of that right has been perfected.

5. Plaintiffs respectfully request that a order of short notice be entered and a hearing on Plaintiffs' Motion for Preliminary Injunction be held on March 8, 2021, or at the Court's earliest convenience.

Respectfully submitted,

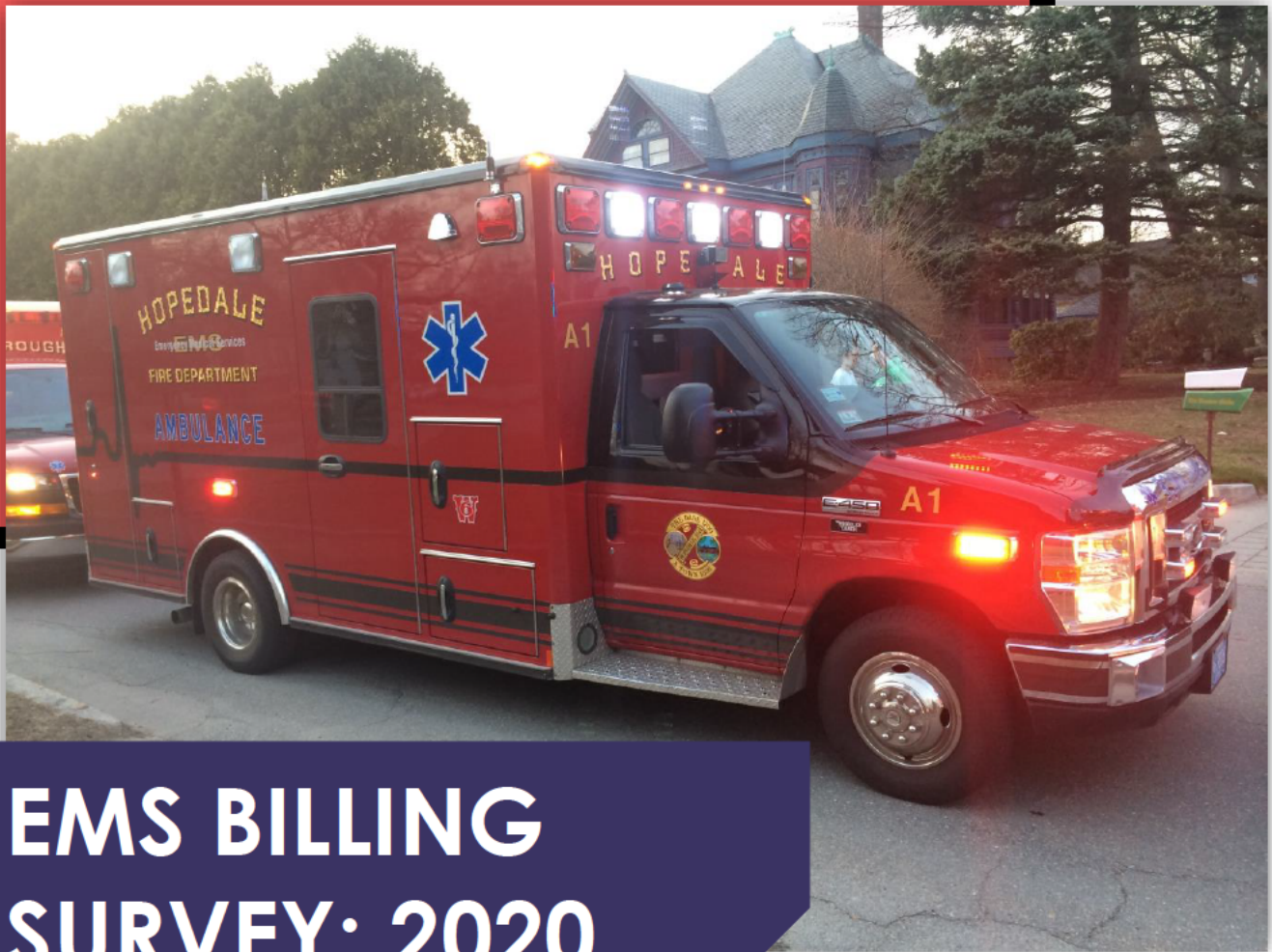
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SHANNON W. FLEMING, and JANICE DOYLE

By their attorneys,



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Dated: March 3, 2021



EMS BILLING SURVEY: 2020

Hopedale Fire Department

Email: bkelly@hopedalefire.org

Tel: (508) 473 - 1050

Website: Hopedale-Ma.Gov/Fire-Department Adr: 40 Dutcher St, Hopedale MA



AMBULANCE REIMBURSEMENT RATES

Medicare Fee Schedule

- The Federal Government, based upon geographic location sets Medicare rates. Some states, such as Massachusetts may have more than one rate dependent on location within the state.

Year / Location	BLS Emergency	ALS 1 Emergency	ALS 2	Specialty Care Transport	Mileage
2020 (01)	\$ 429.21	\$ 509.69	\$ 737.70	\$ 868.20	\$ 7.62
2020 (99)	\$ 395.55	\$ 469.72	\$ 679.86	\$ 803.47	\$ 7.62

- (01) Middlesex County, Norfolk County, and Suffolk County Only
 (99) All other Massachusetts Counties

Medicaid (MassHealth) Fee Schedule

- Both the Federal Government and participating states governments administer Medicaid. States are not however mandated to participate, but since 1982, all states have been actively participating.

Year	BLS Emergency	ALS 1 Emergency	ALS 2	Specialty Care Transport	Mileage
2020	\$ 252.61	\$ 299.97	\$ 434.17	\$ 513.11	\$ 2.99

Private Fee Schedule

Average Private Fee Schedule - By Massachusetts Fire District

Massachusetts Fire District	# of Departments Reporting	BLS Emergency	ALS 1 Emergency	ALS 2	Mileage
District 1	2	\$ 1,650.00	\$ 2,100.00	\$ 3,000.00	\$ 36.50
District 2	4	\$ 1,600.00	\$ 2,161.25	\$ 2,688.75	\$ 37.00
District 3	2	\$ 1,391.75	\$ 2,155.83	\$ 3,269.38	\$ 32.53
District 4	13	\$ 1,335.35	\$ 1,944.20	\$ 2,904.12	\$ 31.99
District 5	2	\$ 1,325.00	\$ 2,075.00	\$ 2,575.00	\$ 42.50
District 7	6	\$ 1,144.86	\$ 1,594.10	\$ 2,321.69	\$ 22.10
District 8	1	\$ 1,142.63	\$ 1,356.88	\$ 1,963.94	\$ 46.53
District 13	5	\$ 1,558.20	\$ 1,956.82	\$ 2,664.48	\$ 34.27
District 14	15	\$ 1,370.55	\$ 1,784.69	\$ 2,450.73	\$ 33.05
Statewide	50	\$ 1,374.17	\$ 1,875.95	\$ 2,634.93	\$ 32.67

Average Private Itemized Fee Schedule - Statewide

	Extra Attendant	Oxygen	ALS Airway	IV Attempt	IO Attempt	Cardiac Monitor (4-Lead)	Cardiac Monitor (12-Lead)
Statewide	\$ 199.57	\$ 98.21	\$ 233.22	\$ 190.11	\$ 282.84	\$ 306.02	\$ 318.52

* The average private itemized billing rates listed above are based upon information provided by 8 Ambulance Services that itemize bill.

Town of Hopedale

2017 Ambulance Fee Schedule (CURRENT)

Base Rate & Mileage Charges

Description	Fee
BLS Emergency	\$ 1,000.00
ALS1 Emergency	\$ 1,500.00
ALS2	\$ 2,000.00
Mileage	\$ 30.00

General Charges

Description	Fee
Extra Attendant <i>To be utilized anytime additional manpower is requested to the scene to assist the ambulance.</i>	\$ 200.00
Hazardous Material Waste <i>To be utilized anytime an intervention is performed that creates hazardous waste. (Ex. IV or IO Therapy, ALS Medication administration, or Epi-Pen administration, ect).</i>	\$ 25.00
Electronic Patient Care Report <i>To be utilized anytime a Patient Care Report (PCR) is generated.</i>	\$ 5.00

BLS Charges

Description	Fee
BLS Routine Supplies <i>To be utilized anytime BLS Supplies are utilized. (Ex. Bag-Valve Mask, Oropharyngeal Airway, Nasopharyngeal Airway, Woundcare, Glucometer, C-Spine, ect).</i>	\$ 50.00
BLS Defibrillation Supplies <i>To be utilized anytime an Automatic External Defibrillator is applied to or used on a patient.</i>	\$ 200.00
Oxygen <i>To be utilized anytime oxygen is applied to a patient. (Ex. Nasal Cannula, Non-Rebreather, CPAP, Nebulizer, ect).</i>	\$ 75.00

ALS Charges

Description	Fee
ALS Airway <i>To be utilized anytime an ALS Airway is placed (Endotracheal Tube, King Airway, End-Tidal CO2 Monitoring, ect).</i>	\$ 175.00
ALS Defibrillation Supplies <i>To be utilized anytime Defibrillation or Pacing Pads are applied to or used on a patient.</i>	\$ 200.00
IV Therapy <i>To be utilized anytime Intravenous Therapy is attempted or completed.</i>	\$ 175.00
IO Therapy <i>To be utilized anytime Intraosseous Therapy is attempted or completed.</i>	\$ 200.00
CPAP Mask <i>To be utilized anytime CPAP is attempted or completed.</i>	\$ 150.00
CPAP Tubing <i>To be utilized anytime CPAP is attempted or completed.</i>	\$ 50.00
Cardiac Monitor <i>To be utilized anytime a patient is placed on a Cardiac Monitor, 1 to 4 Leads.</i>	\$ 100.00
12-Lead <i>To be utilized anytime a patient has a 12-Lead performed.</i>	\$ 125.00

*With the exception of Mileage, no patient shall be billed more than once per transport for the items listed above. (Ex. 3 IV Attempts gets billed as 1).

Hopedale EMS Ambulance Billing Projections 660 Transports

BLS BASE RATE			\$1,080.00	230	\$248,400.00	
BLS MILEAGE			\$30.00		\$0.00	
ALS BASE RATE			\$1,580.00	430	\$679,400.00	
ALS MILEAGE			\$30.00		\$0.00	
OXYGEN			\$0.00	0	\$0.00	
AIRWAYS			\$0.00	0	\$0.00	
IV THERAPY			\$0.00	0	\$0.00	
DEFIBRILLATION			\$0.00	0	\$0.00	
Insurance Type	Percent of Calls	Invoiced	Call Mix ALS/BLS	Contractual Adjustments	Bad Debt	Collectable
Medicare	81.00%	\$ 798,780	348/186	\$ 549,538	\$ -	\$ 249,242
Private Pay/No Ins	5.00%	\$ 50,780	22/12	\$ -	\$ 25,390	\$ 25,390
Insurance/HMO	8.00%	\$ 77,840	34/18	\$ -	\$ -	\$ 77,840
Medicaid	6.00%	\$ 59,800	26/14	\$ 48,105	\$ -	\$ 11,695
Total	100.00%	\$ 987,202	430/230	\$ 597,643	\$ 25,390	\$ 364,168
ANTICIPATED COLLECTIONS						\$364,168
PERCENT OF ALLOWABLE					93%	

Town of Hopedale

(PROPOSED) 2021 Ambulance Fee Schedule

Base Rate & Mileage Charges

Description	Fee
BLS Non-Emergency	\$ 1,250.00
BLS Emergency	\$ 1,500.00
ALS1 Non-Emergency	\$ 1,750.00
ALS1 Emergency	\$ 2,000.00
ALS2	\$ 3,000.00
Specialty Care Transport (SCT)	\$ 4,000.00
Mileage	\$ 35.00

General Charges

Description	Fee
Extra Attendant <i>To be utilized anytime additional manpower is requested to the scene to assist the ambulance.</i>	\$ 200.00
Hazardous Material Waste <i>To be utilized anytime an intervention is performed that creates hazardous waste. (Ex. IV or IO Therapy, ALS Medication administration, or Epi-Pen administration, ect).</i>	\$ 25.00

BLS Charges

Description	Fee
BLS Routine Supplies <i>To be utilized anytime BLS Supplies are utilized. (Ex. Bag-Valve Mask, Oropharyngeal Airway, Nasopharyngeal Airway, Woundcare, Glucometer, C-Spine, ect).</i>	\$ 50.00
BLS Defibrillation Supplies <i>To be utilized anytime an Automatic External Defibrillator is applied to or used on a patient.</i>	\$ 200.00
Oxygen <i>To be utilized anytime oxygen is applied to a patient. (Ex. Nasal Cannula, Non-Rebreather, CPAP, Nebulizer, ect).</i>	\$ 100.00

ALS Charges

Description	Fee
ALS Airway <i>To be utilized anytime an ALS Airway is placed (Endotracheal Tube, King Airway, End-Tidal CO2 Monitoring, ect).</i>	\$ 200.00
ALS Defibrillation Supplies <i>To be utilized anytime Defibrillation or Pacing Pads are applied to or used on a patient.</i>	\$ 200.00
IV Therapy <i>To be utilized anytime Intravenous Therapy is attempted or completed.</i>	\$ 175.00
IO Therapy <i>To be utilized anytime Intraosseous Therapy is attempted or completed.</i>	\$ 200.00
CPAP Mask <i>To be utilized anytime CPAP is attempted or completed.</i>	\$ 150.00
CPAP Tubing <i>To be utilized anytime CPAP is attempted or completed.</i>	\$ 50.00
Cardiac Monitor <i>To be utilized anytime a patient is placed on a Cardiac Monitor, 1 to 4 Leads.</i>	\$ 100.00
12-Lead <i>To be utilized anytime a patient has a 12-Lead performed.</i>	\$ 125.00

*With the exception of Mileage, no patient shall be billed more than once per transport for the items listed above. (Ex. 3 IV Attempts gets billed as 1).



Inter-Facility Transport Proposal

Hopedale Fire Department

Email: bkelly@hopedalefire.org

Telephone: (508) 473 - 1050

Address: 40 Dutcher St, Hopedale MA 01747

Website: Hopedale-Ma.Gov/Fire-Department



INTER-FACILITY TRANSPORT

Introduction

Since 1982, the Fire Department has seen over a 450 % increase in its call volume, yet the number of members doing these calls hasn't exceeded the staffing levels we had in 1982. The current members, with just two Firefighters per shift, are doing the work that other departments are doing with four and six members. Over the past several years, the Fire Department has been unsuccessful in adding staff to adequately protect the residents of Hopedale. With the establishment of the ambulance service in 1999, the ambulance receipts reserve account has assisted the town in maintaining staffing by paying for, a minimum of, two (2) Firefighter/EMT's salaries, wages, benefits, overtime and equipment along with other related expenses associated with the ambulance. The ambulance budget accounts for 30% of the overall "Fire Department" operating budget. When we began the ambulance service, our wish was that this account would flourish and be able to cover the costs associated with hiring new Firefighters without relying on tax revenue for those additional positions. We believe we now have a plan to do just that.

What is an Inter-Facility Transport

An Inter-Facility Transport can be defined as the transport of a patient from one facility to another. There are two categories of Inter-Facility Transports: Emergent/Acute and Non-Emergent. There are a variety of types of transports that could be classified as an interfacility transport such as:

- Transfer from one Hospital to another Hospital
- Discharge from a Hospital to a Skilled Nursing Facility
- Discharge from a Hospital to the patients Home

Inter-Facility Transports would allow the Fire Department to add eight additional Career Firefighters, at NO ADDITIONAL COST to the Town's Residents!

Financial Highlights

Interfacility Transports that are medically necessary are covered by Insurance such as Medicare, Medicaid and Private Insurance. Performing inter-facility transfers as proposed could generate ambulance billing revenue annually.

Operating Highlights

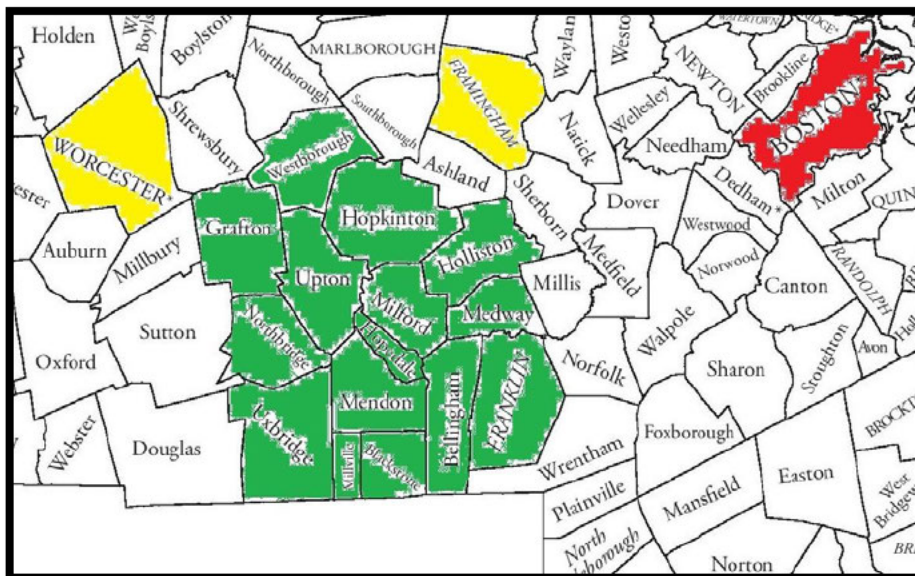
The revenue generated would allow for the Town to sustain, at no additional cost to the residents, eight (8) additional Career Firefighters. This would double the current staffing levels and thus increase Fire and EMS protection for our residents!

INTER-FACILITY TRANSPORT POLICY SUMMARY

The purpose of the Hopedale Fire Department performing Inter-Facility Transports from Milford Regional Medical Center is to provide supplemental revenue to the Fire Department, thereby permitting the Fire Department to expand its Fire and Emergency Medical Services capabilities - without loss or reduction of coverage to the Town of Hopedale.

To ensure that the additional Hopedale Firefighters are available in a timely manner, the Fire Department will place restrictions upon its transport capabilities:

- Perform approximately 6 Inter-Facility Transports per day
- Non-Emergent transports within a two-town radius
- Emergent and Acute transports to various locations as patient's condition dictates



The map to the left, shows the Non-Emergent transport radius (Green), along with the Acute (Yellow), and Emergent (Yellow and Red) transport locations. The average Inter-Facility Transport will place the two Firefighters assigned to

the Ambulance unavailable for an average of 110 minutes (1.8 Hours). In this scenario, two additional Firefighters will be available to the Town of Hopedale for a minimum of 13 hours per day (based upon four (4) Firefighters per shift, 24 hours per day).

The focus of the Fire Department has been and will remain to provide the highest level of service to the residents of the Town of Hopedale. Therefore, if the entire duty crew is not available, an Inter-Facility Transport will not be accepted until the ambulance is available. For example: If the Fire Department's primary ambulance is already on a Medical Emergency, the two remaining Firefighters will not leave the town uncovered to take an Inter-Facility Transport.

FINANCIAL SUMMARY

Ambulance Reimbursement Rates

Medicare Fee Schedule

- The Federal Government based upon geographic location sets Medicare rates. Some states, such as Massachusetts may have more than one rate dependent on location within the state.
 - Middlesex County, Norfolk County and Suffolk Counties receive 8.5% more than the rest of the Commonwealth of Massachusetts.
- Since 2015, the authorized Medicare billing rates for Massachusetts have only increased by approximately 4.5 %.

Year / Location	BLS Non-Emergent	ALS 1 Non-Emergent	Specialty Care Transport	Mileage
2020 (01)	\$ 268.26	\$ 321.91	\$ 871.76	\$ 7.62
2020 (99)	\$ 247.22	\$ 296.66	\$ 803.47	\$ 7.62

(01) Middlesex County, Norfolk County, and Suffolk County Only

(99) All other Massachusetts Counties

Medicaid (MassHealth) Fee Schedule

- Both the Federal Government and participating states governments administer Medicaid. States are not however mandated to participate, but since 1982, all states have been actively participating.
 - In the Commonwealth of Massachusetts Medicaid is also known as Mass Health.
- Since 2008, the authorized Medicaid billing rates for Massachusetts have only increased by approximately 6.9%.

Year	BLS Non-Emergent	ALS 1 Non-Emergent	Specialty Care Transport	Mileage
2020	\$ 157.88	\$ 189.45	\$ 513.11	\$ 2.99

Private Fee Schedule

- Each individual Ambulance Service sets its own ambulance billing rates that are utilized to invoice private insurance companies, self-pay patients, etc.
- Some services choose to utilize only flat rate billing (BLS Emergency, ALS1 - Emergency, etc) while others bill flat rates and then itemize bill for specific services rendered (IV, Cardiac Monitor, etc).
- Hopedale Fire Department currently utilizes both Flat Rate and Itemized Billing. However, current approved flat rates are only for emergent transports. The proposed new non-emergent rates are listed below:

Year	BLS Non-Emergent	ALS 1 Non-Emergent	Specialty Care Transport	Mileage
2021	\$ 1,250.00	\$ 1,750.00	\$ 4,000.00	\$ 35.00

Medicare & Medicaid Adjustments

When a patient has Medicare or Medicaid for their primary insurance, their invoice is automatically “adjusted”. This means that the private rate that the ambulance service bills has the Medicare (or Medicaid) Rate subtracted, and the difference is “adjusted” and is not collectible. Medicare then will only pay 80% of their rate, leaving the remaining 20% payable by either the patient or supplemental insurance.

Medicare Adjustment Example

- Private BLS Transport Rate (\$ 1,250.00) - Medicare BLS Rate (\$ 247.22) = \$ 1,002.78 Adjusted
- Private Mileage (\$ 35.00) - Medicare Mileage Rate (\$ 7.62) = \$ 27.38 Adjusted
- **Medicare Reimbursement Rate = \$ 254.84**
 - Medicare Payment = \$ 203.87
 - Patient/Supplemental Insurance Payment: \$ 50.97
- **Adjusted/Non-Collectable = \$ 1,030.16**

Start-Up Costs

The expansion of services provided by the Hopedale Fire Department while beneficial, does not come without expenses. The majority will be annual expenses such as salaries and wages, as well as benefits associated with adding additional personnel needed to perform these services. However, there will be a few one-time start-up expenses the first year such as turnout gear, radios, uniforms for personnel as well as some capital purchases that are mandated by the State in order for both of the ambulances to be eligible to perform Inter-Facility Transports. The estimated capital purchases will be approximately \$25,000.00.

It is also expected that the current repairs and maintenance budget line-item will increase by approximately 300 % due to the increased amount of fuel consumption and added wear-and-tear maintenance costs.

It should be noted however, that we are presenting a worse-case scenario by hiring just four (4) additional Firefighters, interfacility transfers would only be able to be performed for 12 hours (7a-7p) per day while the additional Firefighters are on duty, which while resulting in additional revenue, is estimated to only be \$ 565,000.00.

Table 1 - Cost of 4 Career Firefighters without SAFER Grant

DESCRIPTION	SALARIES	OVERTIME	EQUIPMENT	BENEFITS
2 - Firefighter / EMT's	\$ 109,965.00	\$ 64,050.00	\$ 29,400.00	\$ 15,600.00
2 - Firefighter / Paramedic's	\$ 119,079.00	\$ 68,670.00	\$ 29,400.00	\$ 15,600.00
<i>Total First Year Cost</i>	<i>\$ 229,044.00</i>	<i>\$ 132,720.00</i>	<i>\$ 58,800.00</i>	<i>\$ 31,200.00</i>

This brings the total cost of the first year of operation (without the SAFER Grant) to just under \$ 451,800.00. The second year of operation with same staffing, four (4) additional Firefighters would require annual funding of approximately \$ 393,000.00, less the \$58,800.00 for equipment. If ambulance receipts allow, it is the intention of the Fire Department to add an additional four (4) Firefighters at the beginning of the second year of the Inter-Facility Transport Plan which would result in having four (4) Firefighters on shift 24 hours per day. While these numbers may seem overwhelming at first glance, it is important to remember that the anticipated income of doing these Inter-Facility Transports, in addition to average annual

collected revenue of \$385,000.00 we receive annually from the Emergent Transports we already do, is approximately \$ 565,000.00 annually.

It is the intention of the Fire Department to apply for the Staffing for Adequate Fire and Emergency Response (SAFER) Grant, which is due at 5:00 pm March 12, 2021, to hire eight (8) additional members in order to provide this service 24/7/365. If we are successful in obtaining this grant, the start-up cost will be significantly less as the Federal cost share is 100% of salaries and benefits for the first three (3) years of the grant. Please see Table 2 for the startup cost if we are successful in obtaining this grant. Table 2 depicts the expected cost of adding eight additional Firefighters for the first three years - with obtaining the SAFER Grant.

Table 2 - Cost of 8 Career Firefighters with SAFER Grant

DESCRIPTION	SALARIES	OVERTIME	EQUIPMENT	BENEFITS
4 - Firefighter / EMT's	\$ 0.00	\$ 128,100.00	\$ 58,800.00	\$ 0.00
4- Firefighter / Paramedic's	\$ 0.00	\$ 137,3410.00	\$ 58,800.00	\$ 0.00
<i>Total First Year Cost</i>	<i>\$ 0.00</i>	<i>\$ 265,440.00</i>	<i>\$ 117,600.00</i>	<i>\$ 0.00</i>

To summarize, if the SAFER Grant is not successfully obtained and the Town of Hopedale hires just four new Firefighters to begin its first year of Inter-Facility transports, the program is projected to generate approximately \$ 47,000.00 in additional revenue a month. This will allow the receipts reserve account to replenish at a greater rate than our out-going monthly expenses. Our monthly costs, which include, salaries, benefits, overtime, supplies and repairs and maintenance would be around \$30,000.00, which results in a net gain of \$17,000.00 per month. Following the initial equipment cost of \$83,800.00, the net revenue would equal approximately \$102,000.00 annually.

Conversely, if approved for the SAFER Grant, the Town would not need to pay salaries or benefits for eight (8) Firefighters for the first 3 years. However, a one-time cost of \$ 142,600.00 for equipment is required for the first year. Also, each year \$265,440.00 in overtime for shift coverage and call-back is not included in the SAFER Grant. These costs would need to be appropriated from the ambulance receipts reserve account. This would

result in a net gain of approximately \$ 1,500,000.00 to be placed into the ambulance receipts reserve account over three years.

The SAFER grant, if awarded will cover 100 % of the cost of salaries and benefits for eight Career Firefighters!

\ Anticipated Inter-Facility Transport Revenue

Milford Regional Medical Center discharges or transfers an average of 15 patients per day out of the Emergency Department alone. In addition to the Emergency Department, the hospital has 149 in-patient beds, resulting in additional daily discharges and transfers. Currently the hospital discharge/transfer rate is approximately 2 Basic Life Support (BLS) Transports for every 1 Advanced Life Support (ALS) Transfer. At approximately 6 discharges per day, this would result in 2,190 Inter-Facility Transports performed annually by the Hopedale Fire Department (1,460 BLS and 730 ALS).

Table 3 projects anticipated revenue based upon a joint study performed by the Hopedale Fire Department and Coastal Medical Billing Company utilizing Inter-Facility Transport numbers provided by Milford Regional Medical Center.

Table 3 - Projected Inter-Facility Transport Revenue

DESCRIPTION	MEDICARE	MEDICAID	PRIVATE	SELF-PAY	TOTAL
BLS Revenue	\$ 305,982.95	\$ 14,288.12	\$ 151,090.00	\$ 95,082.50	\$ 566,443.57
ALS Revenue	\$ 182,081.19	\$ 8,533.14	\$ 104,545.00	\$ 66,692.50	\$ 361,851.83
Total Revenue	\$ 488,064.14	\$ 22,821.26	\$ 255,635.00	\$ 80,887.50 *	\$ 847,407.90 *

** While self-pay totals \$ 161,775.00, the anticipated revenue from self-pay patients has been reduced by 50 % to account for patients that will not or cannot pay for the services rendered.*

It is important to note, that the anticipated revenue referenced above is only for Inter-Facility Transport Services that are proposed to be provided by the Hopedale Fire Department and does not reflect the currently annual ambulance receipts from Emergent (9-1-1) Responses currently performed, which totals an additional \$ 385,000.00 annually.

Looking Ahead

Given the current financial difficulties experienced by the Town of Hopedale, Inter-Facility Transports could be the key to expanding Fire and Emergency Medical Services (EMS) coverage to the residents of the Town of Hopedale at little to no cost. The additional EMS Billing revenue will allow the ambulance reserve receipts account to grow once more, to allow for EMS capital purchases to be paid for completely by ambulance receipts. An example of an anticipated capital expense in the first two to three years of the Inter-Facility Transport Program, is the purchase of a third ambulance. This ambulance would serve several roles; in the event that one of the two primary ambulances required regular preventative maintenance, the department would still have two ambulances available for Emergent and Non-Emergent responses. In addition, should a 2nd occurring medical emergency occur within the Town of Hopedale while an ambulance is committed to an Inter-Facility transfer, the department would still retain the ability to re-call off-duty personnel to staff the ambulance as it currently does.

Furthermore, there is the possibility of expanding the Emergent and Inter-Facility Transport capabilities of the Fire Department by adding even more staff funded primarily by Inter-Facility Transports which would bring the department further into compliance with NFPA 1710 which is the Standard for the Staffing and Response Guidelines set forth by the National Fire Protection Association (NFPA). Meeting NFPA standards would potentially increase the departments Insurance Services Office (ISO) rating, which would then provide savings to the residents by decreasing the cost of their Homeowners Insurance.

MILFORD REGIONAL MEDICAL CENTER - CONTRACT

Requirements

- The Hopedale Fire Department shall be required to maintain 24-hour per day, seven day per week coverage with personnel who are qualified and certified to perform basic and advanced life support, inclusive of priority dispatch, for emergency and non-emergency medical transportation. (Hopedale Fire Department already operates within these guidelines)
- The Hopedale Fire Department shall be one of three contracted provided for services for all patients during the term of the contract (1 Year, renewing automatically if each party does not object or withdraw), each will be utilized on a rotating basis.
- There will be no minimum notice required for the provision of emergency or non-emergency advanced life support or basic life support services. Milford Hospital will provide a minimum of one hour notice for non-emergency services; to the extent such is possible. Hopedale Fire Department, upon accepting an Inter-Facility Transport shall be on scene at Milford Regional Medical Center within:
 - Emergent: 15 Minutes
 - Acute: 30 Minutes
 - Non-Emergent: 1 Hour

Compensation & Billing

- The Hopedale Fire Department shall be responsible for all patient and third-party billing and agrees that the rates to be billed shall comply with applicable laws. (Hopedale Fire Department already is contracted with Coastal Medical Billing for current EMS Billing)
- Prior to or at the commencement of any scheduled service, Milford Hospital shall provide Hopedale Fire Department with patient billing information, including all documentation necessary for third-party reimbursement and determination of medical necessity.
 - This information shall include but not be limited to Patients name, social security number, insurance information (medical, Medicaid, Private Insurance, etc), where applicable; the origination and destination; available medical history, patient condition and the reason for the medical transportation; and Physician certification statement, when required.

Memo



To: Chief Daige
From: Firefighter Kelley
Date: February 23, 2021
Re: Proposed EMS Billing Increase

Chief,

After conducting a statewide survey of EMS Billing, of which 50 Fire Departments responded, it has become clear that we currently have some of the lowest rates within District 14. In addition, in anticipation of the potential for performing Inter-Facility Transports non-emergently, we do not currently have established non-emergent rates.

I have enclosed the following for your review:

- A brief overview of the data obtained from the 2020 EMS Billing Survey (Pages 1 through 3)
- Our current EMS Billing Rates (Page 4)
- Projections for annual EMS Billing Revenue based upon our current rates and an average of 660 transports per year - provided by Coastal Medical Billing (Page 5)
- Proposed 2021 EMS Billing Rates (Page 6)
- Projections for annual EMS Billing Revenue based upon the Proposed 2021 Rates provided and an average of 600 transports per year - by Coastal Medical Billing (Page 7) **

*** These projections are based upon our current call volume only and does not include projections for Interfacility Transfers.*

If you have any questions, please don't hesitate to contact me!



TOWN OF HOPEDALE

78 Hopedale Street - P.O. Box 7
Hopedale, Massachusetts 01747

Tel: 508-634-2203 Fax: 508-634-2200

Town Administrator Updates March 8, 2021

1. Budget
 1. FY22 Draft Budget in Process – Meetings with Fin Com Ongoing
 - i. Parks Commission & Board of Health, March 10, 6 pm
 - ii. Public Safety, March 17, 6 pm
 2. Capital Plan Under Review
2. Union Negotiations (Six Units & Schools) - ongoing
 - i. PEC Meetings – Next Meeting Tentatively Scheduled for April 8
3. Grants
 1. Municipal Vulnerability Preparedness (MVP) Planning (EEA MVP Planning Grant - \$17K & 150 hrs. matching core team time)
 - i. Core Team Meetings
 - ii. Stakeholder Workshops Scheduled for 3/16 & 3/18
 2. Library Roof Repairs (MA Historic Grant - \$55K)
 - i. Grant contracts co-signed and received by State
 - ii. Bids Received 2/28/21
 - iii. Contract Awarded 2/22/21
 - iv. Notice to Award & Contract Docs Sent 3/4/21
 3. Mass Works Mendon Street/Cumby's Intersection (MassWorks Grant - \$1 mil)
 - i. ROW work in process with Consultant & Town Counsel
 - ii. Easements Being Prepared for ATM vote
 4. CARES Act Funds (CARES Act - \$503K)
 5. Master Planning (Housing & Economic Development) (\$50K)
 - i. Visioning Workshop Complete
 - ii. Benchmark Review Underway
 6. EEA OSRP Start & Zoning Review (EEA Grant - \$33,500)
 - i. Activate Open Space & Recreation Planning Committee (Revisit Constitution on 3/8 agenda)
 7. Hazardous Mitigation Grant (\$17,500)
 8. COPS grant (awarded)
 9. CC Municipal IT Grant (\$47K)
 - i. Electronic permitting for BoH, Building and BoS
 10. Community One Stop for Growth – Expression of Interest Due 2/8-4/2
 - i. Planning Board Voted to Use LPA Hours of CMRPC to Submit at Meeting of 3/3
 - ii. Planning Board Voted to Submit DLTA Application to CMRPC for Permitting Guide

4. Projects
 1. CPA (Committee Bylaw to Appear on ATM)
 2. Stormwater MS4 Permitting (Planning Board Hearing Tentatively Scheduled for April 7, 2021)
 3. Streetlight LED Conversion (Waiting for National Grid)
 4. Green Communities Designation
 - i. Submitted & Awaiting Response
 - ii. Rebate Paperwork Submitted to National Grid for LED Conversions at Police Station, Bancroft Memorial Library & Jr/Sr High School)
 5. Complete Streets Policy Adoption & Prioritization Planning
 - i. Policy Adopted 2/8/21 & Submitted to DOT Portal
 6. Website Redesign/Updates & Implementation
 - i. Approved & In Final Development at Civic Plus
 7. Freedom Street Dam Repair/Reconstruction
 - i. Proposal Received; Sent to Owner & To Be Reviewed by Road Commissioners on 3/10
 8. Draper Mill Demolition & Redevelopment
 - i. WBCDC to Provide Update to MPSC on 3/17
5. Notice of Right of First Refusal (aka) GURR Railroad Mediation & Settlement Agreement Implementation
6. COVID