

Board of Selectmen

Regular Meeting Minutes May 24, 2021, 7PM

Present Chair Brian R. Keyes, Louis J. Arcudi, III, Glenda A. Hazard, Town Administrator Diana Schindler
Chair Keyes called the meeting to order at 7:00PM. Chair Keyes began the meeting with the pledge of allegiance.

Reorganization of Board of Selectmen - Post Election

Town Administrator Schindler welcomed and congratulated Glenda A. Hazard on winning the election. Selectman Arcudi stated that this will be his last term as a Select Board member and will not be able to take on the role of Chair. Selectwoman Hazard stated that she does not possess the experience to take on this role just yet and feels that Selectman Keyes would be best in the role of Chair at this time.

Selectman Arcudi moved to nominate Selectman Keyes as Chair of the Board of Selectmen. Selectwomen Hazard seconded the motion. Arcudi – Aye, Hazard – Aye, Keyes – Aye

Hopedale Municipal Vulnerability Preparedness Listening Session, Present Mary Hannah Smith, Assistant Environmental Planner, CMRPC. Mary Hannah presented a slideshow regarding the MVP program. She discussed what the MVP program entails, the planning process, workshops that have taken place and the implementation process for the Town of Hopedale.

Consent Items

Approval of March 1, 2021 Regular Minutes

Approval of March 8, 2021 Regular Minutes

Approval of March 15, 2021 Regular Minutes

Selectwomen Hazard was not a board member during these meetings, she will not be voting on these minutes.

Selectman Arcudi made a motion to approve March 1, 2021, March 8, 2021, and March 15, 2021 regular meeting minutes. Chair Keyes seconded the motion. Arcudi – Aye, Keyes – Aye

Accept the Donation from the Reilly Family to offset operational expenses of Police & Fire departments; \$10,000 donation to each department.

Selectman Arcudi moved to accept the donation from the Reilly Family to offset operational expenses of Police and Fire Departments, \$10,000 each. Selectman Hazard seconded the motion.

Chair Keyes stated that in the previous meeting, this item was passed over due to a request for adjustment to the donation letter. Town Administrator Schindler clarified that in the previous meeting the Board asked to move the \$10,000 towards the school to the School Committee for approval, this has been completed. The second Board of Selectmen request was to get more clarification regarding the use of the donations to Police and Fire. Town Administrator Schindler stated that the donor is not interested in submitting a revised letter, however, the donor specified that the donation to Police and Fire is intended to replace \$10,000 in operational expenses to offset any decrease to the budget due to legal expenses from the lawsuit. This donation is not to be used to pay legal fees from the lawsuit. Chair Keyes mentioned that KP Law has been contacted regarding any ethics issues with accepting this donation, KP Law has confirmed there will be no ethical repercussion to the Board of Selectmen accepting this budget.

Arcudi – Aye, Hazard – Aye, Keyes – Aye

Appointments and Resignations: Appointment of Suzanne MacNeil to the Open Space & Recreation Planning Committee, effective May 24, 2021 for an unexpired term.

The Board of Selectmen thanked Suzanne for her interest in the Open Space & Recreation Planning Committee and are grateful for her future work on the committee. Suzanne talked of her experience and interest that will be put toward the committee.

Selectwoman Hazard moved to appoint Suzanne MacNeil to the Open Space & Recreation Planning Committee. Selectman Arcudi seconded the motion. Hazard – Aye, Arcudi – Aye, Keyes – Aye

New Business: Annual Town Meeting Recap; Call for Debt Exclusion (Vote)

Chair Keyes thanked the Town's people that attended the Annual Town Meeting. Town Administrator Schindler stated that in order to be able to purchase some additional capital and equipment purchases for this year, the Town would like to be able to re-access the stabilization monies that was allocated at Town Meeting from free cash. If this debt exclusion vote does not pass, then the Town will need to go back to Town Meeting and take the money back out to use it for operations. Schindler clarified that regarding the debt exclusion, we are asking the Town to excluded debt that is already authorized, the town is in debt service payments. Chair Keyes stated that he would like Chair Hodgen's of the Finance Committee to speak to the Finance Committee's strong debt exclusion recommendation, instead of spending free cash. Chair Keyes stated he does not support draining the free cash account to pay for the shortfall. Schindler stated that Chair Hodgen's is not on this meeting to state the recommendation. Selectman Arcudi clarified that currently, the Town does not have a balanced budget, however, if this debt exclusion passes the Town will then have a budget that is balanced. If this does not pass, then the Town will have to take the monies from the free cash account. Selectman Arcudi stated that if the Town does not have to pull from the free cash account, then the Town will have additional monies to pay for capital items and operational items for multiple departments. Lastly, Selectman Arcudi stated that there are still 4-5 contracts that need to be completed, if the debt exclusion passes then the Town will have the funds to incorporate collective bargaining raises. Town Administrator Schindler stated that the capital expense request should be made available to the public if this vote it to be taken. Town Administrator Schindler clarified that the monies are in stabilization, not free cash.

Selectman Arcudi moved with the debt exclusion vote as it's written by Attorney Riley. Selectwoman Hazard seconded the motion. Arcudi – Aye, Hazard – Aye, Keyes – Aye

Inter-Municipal Agreement for Regional Dispatch Services Between the Towns of Upton and Hopedale. Town Administrator Schindler stated that this is the agreement with the Town of Upton for the call down service for 911. The agreement is extended for 3 years with no increases to the cost. Chief Daige expressed that this has been an excellent arrangement with this Town of Upton. This agreement is solely for the e-911 system, the ring-down. Upton takes Hopedale's 911 calls and does the emergency medical dispatching, which allows Hopedale to get the proper apparatus going at any time for emergency calls. Due to this partnership, the Hopedale Fire Department was able to obtain a \$75,000 grant that will be applied to the dispatch system for all new equipment. Selectman Arcudi thanked Chief Daige and the Town of Upton to continue this agreement for the next 3 additional years at not additional cost to the Town of Hopedale.

Selectman Arcudi moved to accept the inter-municipal agreement for regional dispatch services between the Towns of Upton and Hopedale. Selectwoman Hazard seconded the motion. Hazard – Aye, Arcudi – Aye, Keyes – Aye

Expression of Interest & Full Application for Community One Stop for Growth

Town Administrator Schindler asked the board to share their thoughts regarding this grant application, specifically the Draper Mill redevelopment and the traffic analysis. Selectman Arcudi stated that regarding the mill, the projects listed may be to premature to be asked. However, he feels that this application should be submitted so the Town is in the queue and has gained experience regarding this process.

Old Business: Request to Accept Gift from Virginia A. Larkin and Richard D. Larkin (a 30-foot-wide paved access road into the Hopedale Parklands from the present end of the pavement on Overdale Parkway. Refer to Special Town Meeting, June 24, 1985, Article 7); *Ricardo Lima, Resident; Attorney Tom McLaughlin & Attorney Stephan Rodolakis (representing requesting parties); Katharine Klein, KP Law, Town Counsel*

Attorney Klein stated that she had reviewed Article 7 from a 1985 town meeting, this article stated the Town was asked to accept property from Virginia and Ed Larkin, totaling 703 ft of Overdale Parkway. After additional research, Attorney Klein stated that Overdale Parkway is under the jurisdiction of the Board of Selectmen. Attorney Klein presented a title report from May 18, 2021, provided by Gould Title Company addressed to Attorney Rodolakis stating the roadway itself is not under the jurisdiction of the Park Commissioners. There are earlier opinions, one of which is from Joseph Antonellis in 1999, stating that there is no evidence of any dedication to parklands. Antonellis researched each town meeting warrant from 1918 – 1999 and determined that the land deeded to the town was never dedicated to parklands. The title report found that there are 5 deeds that went out for the 703 ft space from 5 different parties and the Town already owns the road. None of the 5 deeds state that this is parklands property or dedicated to Article 97. Attorney McLaughlin stated that his findings were the same as Attorney Klein's, he elaborated on the 5 deeds, stating that it was originally comprised of five 50 ft wide strips of land, which the Town purchased in 1916. Attorney McLaughlin stated that all of the title companies agree that this is Town owned land, and it was not dedicated to parklands. Attorney McLaughlin stated that he represents Ricardo Lima, Lima's property (7-acre parcel purchased from the Larkin family) abuts the 703 ft unpaved portion of Overdale Parkway. In June of 1985, the Town meeting approved a warrant article (Article 7) to accept a gift from the Larkins. The article provided that the acceptance of the gift would formally take effect when the Board of Selectmen records a statement accepting the gift at the Worcester Registry of Deeds. Mr. Lima's request is the Board of Selectmen accept the gift from the Larkins in accordance with the 1985 article. There are several restrictions that are imposed from this article for the benefit of the Town. Firstly, the road is to be constructed only with full approval of the Road Commissioners. Second, the road would provide access only for 10 lots, Lima having 4 on the easterly side of the road and Attorney Rodolakis' client having 6 on the westerly side of the road. If any owner allows someone to use the road to access their property, then that owner loses their rights to use the road. Attorney McLaughlin and Attorney Rodolakis' client have agreed to create a cul-de-sac at the top of the road to create parking spaces to allow residents access to the parklands. Attorney Rodolakis stated that additional protections have been added by his client since the 1985 article. Chair Keyes summarized that if this is accepted then there will be a potential for 10 new homes in Hopedale and also a tax revenue incentive. Attorney Klein stated she would like to see this memorialized in a written agreement. Selectman Arcudi stated that the motion will have to be given to the Board of Selectmen by Attorney Klein. Selectman Arcudi clarified not all 10 homes abut Hopedale Parklands, some homes will abut Mendon, MA. Attorney Rodolakis stated that the 6 lots abut the Hopedale parklands, 1 of Lima's 4 lots abut the parklands. Regarding the written portion of the agreement, Attorney Klein's recommendation is that the Board of Selectmen vote to accept the deeds for the 703 ft of Overdale Parkway subject to the owners of the abutting properties, Blackbrook Realty Corp., and Ricardo Lima, agreeing to the terms of the Agreement. The contingencies are bringing the portion of the road up to specifications acceptable to the Road Commissioners and the Planning Board and its consultants while obtaining and paying for all permits and approvals for a subdivision from all applicable Boards/Commissions. The applicants will create a cul-de-sac and parking spaces (4-5). The applicants would restrict the number of lots, Blackbrook to 6 on its respective property and Ricardo Lima to 4 on their respective properties. Once the subdivision for Blackbrook is final and unappealable, Blackbrook would impose convey to the Town or impose a conservation restriction on the remainder of its property in Hopedale, in the Town's discretion.

Selectman Arcudi moved for discussion of the motion specified by Attorney Klein. Selectwoman Hazard seconded.

Selectwoman Hazard asked Attorney Rodolakis for an estimated number that will be deeded to the Hopedale Parklands. Attorney Rodolakis stated that they would work cooperatively with the Town, Planning Board and Conservation Commission to maximize the amount of land that would be deeded to the Parklands. Not having the precise location of the building envelopes for the lots makes estimating difficult but he stated he's hoping to deed a range of 10-12 acres. Selectman Arcudi wanted to clarify to the residents that if the Board of Selectmen moves forward with this, a stipulation of this agreement is that there is a ring around the property and they will not be able to build anything around it, and if there are other accesses through Mendon, MA to get to subdivisions, this will never encroach on Hopedale. Chair Keyes opened the discussion for resident comment and question. Non-Hopedale Resident Rob Fahey inquired about the validity of the article, due to the land coming from Ricardo Lima instead of the Larkins. Attorney Klein stated the article is still valid, however it is a peculiar article considering that the gifts of property were already made 70 or so years before this article was written, referencing the earlier deeds from 1916. Attorney Klein stated that she does not think the article is stale by virtue by passage of time and the Board of Selectmen is within its discretion in moving forward if it so chooses. She is not aware of any law that would make this article invalid. Attorney Rodolakis stated that he feels the right to make the gift runs with the land. Attorney Klein stated that the gift was already made in 1916, the land was conveyed over 100 years ago. Chair Keyes wanted to clarify that multiple boards/commissions will be involved in this. Resident Scott Galante asked Selectman Arcudi if he disclosed his relationship with Ricardo Lima due to him being Selectman Arcudi's neighbor. Galante references the Massachusetts ethics code stating any friend or neighbor needs to be disclosed with the Town Clerks office, and asked Selectman Arcudi to recuse himself because a disclosure was not submitted. Selectman Arcudi stated that there is no gain with his involvement regarding this item. Chair Keyes felt it beneficial to add that Ricardo Lima is a Police Sergeant with the Town of Hopedale. Attorney Klein stated that the relationship of a neighbor to a neighbor does not create an appearance of impropriety. Attorney Klein stated that being neighbors does not qualifies as a significant relationship. Galante stated that he is a direct abutter of this property being discussed. Selectman Arcudi stated that the Board of Selectmen are not voting on the 10 residential home developments, the Board of Selectmen are strictly voting to accept a gift to the Town. Attorney Klein stated that if the Board of Selectmen do not vote in favor of this item, Attorney Rodolakis' client has the potential of developing more than 10 homes (estimated up to 30), however, if the Board of Selectmen vote favorably, this would then restrict Attorney Rodolakis' client to 10 homes plus protections to the Parklands.

Chair Keyes asked for a roll call vote to accept the gift on the motion that was put forth and advised by Town Counsel, Attorney Klein.

Hazard – Nay, Arcudi – Aye, Keyes – Aye

Selectwoman Hazard stated that she voted no to this agenda item due to feeling that in the interest of the residents of Overdale she needs to vote no. It bothers her that the land is zoned residential and she feels that the Board has missed opportunities in many areas in Town when the Board could have voted to protect land.

Town Hall Reopening & Board/Committee Meetings Protocol – Effective June 1, 2021

Town Administrator Schindler stated that post COVID town hall would be reopening. As of May 29, 2021, all of the Governors restrictions have been lifted and the emergency order is ending June 15, 2021. Schindler stated that effective June 1, 2021, she would like to allow the public back into Town Hall for regular hours. Schindler proposed to the Board to close the town hall building to the public early on Fridays for employee trainings/professional development. The Board asked to have a discussion regarding a professional development strategy at a future meeting. Regarding COVID, Chair Keyes stated that a reopening plan must be discussed at the next Board meeting.

Selectman Arcudi moved to open the Town Hall to the public for regular hours effective June 1, 2021. Selectwoman Hazard seconded the motion.
Arcudi – Aye, Hazard – Aye, Keyes – Aye

Collective Bargaining Assignments Discussion (Clerical, Public Works, Dispatch, Fire, Call Fire), Updates and Timeline

Schindler stated that there are 5 units to be negotiated. Schindler asked who the liaisons will be to assist her with negotiations. Chair Keyes stated that the Board of Selectmen are able to assist the Town Administrator. Schindler stated that Selectwoman Hazard is able to assist her with DPW and Clerical negotiations.

Update regarding Notice of Docket Entry 2021-J-0111, Reilly, et als v. Town of Hopedale, et als; Attorney Riley, KP Law prepared a statement regarding this item, Attorney Riley was not available for tonight's meeting. Chair Keyes read the statement. The plaintiff's response to the Towns motion is due by June 1, 2021, all papers will be filed with Superior Court and we will then ask for a hearing. We oppose their position and submit that the Land Court settlement agreement is valid. If the Town wants to get any of this property and avoid further litigation with the Railroad it will be pursuant to the settlement agreement.

Public and Board Member Comments (votes will not be taken): Memorial Day: Monday, May 31, 2021, at 9 am Ceremony at Hopedale Village Cemetery then moving to South Hopedale Cemetery for 10:30 am Ceremony.

Selectman Arcudi took this time to thank Don Howes for his time and efforts on the Park Commission. He is still an active community member and assists with other Boards.

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

Xfinity RE: Programming Advisory, the distributor of Newsy informed Comcast that effective June 30, 2021, the channel will cease operation as a traditional TV channel. It will continue to be available as part of the Xumo app.

Central Massachusetts Mosquito Control Project personnel will be in our community to respond to residents' concerns about mosquitoes in the area on the following dates: June 1, 2021, June 7, 2021, June 14, 2021, June 21, 2021, and June 28, 2021.

Central Massachusetts Mosquito Control Project, Notice of Upcoming Helicopter Applications Over Selected Wetlands in your Community

Selectman Arcudi moved to enter executive session per the purpose that Chair Keyes read. Selectwoman Hazard seconded the motion.

Arcudi – Aye, Hazard – Aye, Keyes – Aye

Executive Session:

To move into Executive Session, pursuant to M.G.L. c.30A, § 21(a):

For item # (3) To discuss strategy with respect to collective bargaining or litigation that an open meeting may have a detrimental effect on the litigation position of the public body and the chair so declares, which he does. Purpose: Collective Bargaining; Clerical, Public Works & Dispatch Units.

Chair Keyes dissolved the meeting at 11:00PM

Submitted by:

Lindsay Mercier

Lindsay Mercier, Executive Assistant

Adopted: _____

**Board of Selectmen
Regular Meeting Minutes
September 13, 2021, 7:00PM**

Present: Chair Keyes, Selectman Arcudi, Selectwoman Hazard, Town Administrator Schindler.

Chair Keyes convened the meeting at 7:00PM. Chair Keyes began the meeting with the Pledge of Allegiance.

Chair Keyes thanked those involved in the preparing the 911 remembrance ceremony that took place over the weekend at the Atria.

Colonel Masnik Citation Award, Presented by Chair Brian R. Keyes. Chair Keyes read the citation award dedicated to Colonel Masnik. Chair Keyes stated that the annual Hopedale Day at the Park will be dedicated to him. Chair Keyes will also present and read the citation award at the Day at the Park. The Board of Selectmen thanked Colonel Masnik for all he has done for his Country and his community.

7:00 pm, Joint Meeting w/ Water & Sewer Commission
Ed Burt, Chair of the Water Commission called the joint meeting to order at 7:07PM.

Water Sourcing Update, ARPA funding Water Source/Adin Street, PFAS update and litigation, Draper Mill, Cost-Sharing Agreement Status

Selectman Arcudi asked Watson to define and explain what PFAS is for the residents. Watson stated that there are hundreds of thousands of PFAS components. The Environmental Protection Agency (EPA) and Department of Public Health (DP) gave guidelines regarding a maximum contaminant level known as PFAS 6. PFAS is a chemical used for water proofing, some examples are duct tape, firefighting foam, certain gloves. PFAS is not safe for human consumption. This is a manmade chemical. Regarding the Class Action suit, the law firms are going after the manufacturers of PFAS. The Water Commission will be meeting with the law firm to discuss the options and if the Town can move forward. Watson stated that if their board chooses to move forward, funding will need to be explored.

Ed Burt gave the Selectboard a brief overview of events, he stated that at the beginning of the year, the Town was focused on locating a water source between Bens Way and the Golf course using new horizontal drilling techniques. This was primarily funded through a PFAS grant which also covered the cost of doing a design for plant upgrade for PFAS mitigation. In June 2021, the exploration came to conclusion where the Town was not successful with the well. The plant upgrade and design were completed. This information led to more detail related to bedrock wells. Due to this information, the Town is able to locate where Milford Granite is which is led to the new source. Tim Watson, Superintendent of the Water/Sewer Department stated that there are different water qualities in different areas of Town. There is a large area that consists of milford granite that starts on Laurelwood and continues through Bens Way, Richard Road and continues into the Town of Mendon. Watson stated that a true bedrock well would not be under the influence of surface water, the Towns bedrock wells that have the PFAS issues are under the influence of surface water. Watson stated that they have identified a number of fractures but were able to pinpoint two fractures that would not require additional land taking. Town Administrator Schindler shared the maps that the Water Commission provided. The two fractures will provide 400ft radius. On Wednesday, the Water Department will conduct a low frequency test, this will verify soil types and bedrock depths in an effort to pinpoint the bedrock well, drilling will then need to be done. The next course of action is to provide access to the bedrock, the Water Department will need to wrap around the wetlands and the swamp to access the two locations. There will need to be tree clearing about 25ft wide, stump removal and adding gravel to the road. The cost of the project is estimated around \$200,000, the Town can reduce this number by \$40,000 if they succeed on the first well. Watson stated this is the best option at this point in time if water is found. The Town will only need to run a pipe to the water main due to the proximity. Watson stated that if the Selectboard approves the funding tonight, the Water Department will have this done by December 2021. On the PFAS treatment, the upgrades are about 3.2 million dollars, the Water Department applied for a low interest loan for funding, however, if the water source does not need PFAS treatment then the debt would be pushed back. Town Administrator Schindler stated the money that has been discussed for this project is the American Rescue Plan Act (ARPA) money, the Town received \$311,441 which is the first portion of the ARPA money. The Town will receive twice the amount of this totaling \$622,000 is the Towns allocation. This is federal funding that is fairly limited in the eligible categories that Towns can spend it on, one of the categories is Water/Sewer, Broadband and Stormwater Infrastructure. Chair Keyes stated this will not be a taxpayer burden. Selectman Arcudi asked Town Administrator Schindler if there were discussions with the Finance Committee if this was the best way to spend the ARPA monies or was this money planned on being spent elsewhere. Schindler stated that there have not been discussions with the finance committee. Watson stated that a decision and vote on the ARPA funding is very time sensitive.

Chair Keyes asked the Finance Committee to join the joint meeting to discuss the ARPA funding for the Water Department project, spending \$311,411 of the \$622,000 from ARPA.

Chris Hodgins, Chair of the Finance Committee stated that due to this not being on the finance committee's agenda, they will not be voting at tonight's meeting. The finance committee will decide at their next meeting after having time to review. Selectman Arcudi stated that a joint meeting with the finance committee can be scheduled for next week. The finance committee will give their vote/recommendation then the Selectboard can vote.

Watson stated that regarding the Adin St project, it would make most sense to do the infrastructure work on the water lines prior to the complete streets project. Regarding the cost sharing agreement, Chair Burt stated that this item is put on hold until after the lawsuit.

Don Cooper moved to conclude the joint meeting. Jim Moring seconded the motion.
Cooper – Aye, Morin – Aye, Burt – Aye

Chair Burt closed the joint meeting at 7:52PM

7:35 pm Joint w/ Finance Committee

Chair Hodgen's called the joint meeting to order at 7:53PM

Discussion and Consideration of the Significant/Capital Expenses Items

Chair Hodgens presented a preliminary recommendation on the capital items that should be put before voters at town meeting. Chair Hodgens stated that this list is subject to change due to some outstanding questions from department heads, these will be answered, and the list will be finalized prior to town meeting. Town Administrator Schindler shared the capital investment recommendation on her screen. The listing shows the departments, the items requested, and amounts requested. The Finance Committee started with \$192,000 for available funds. These funds due to the debt exclusion were put into stabilization. Chair Hodgens stated that the total debt exclusion was around \$292,000, the finance committee is estimating about \$100,000 will be consumed through separate warrant articles that will be put forward that the committee has not reviewed as of yet. Regarding the department requests that did not make this list, the departments will be notified after this meeting and a plan will be created to incorporate the requests in future budgets. Ideally, the list will be a running list so that no requests are left off. Chair Keyes stated that he is comfortable with the items on the list. Keyes stated that the Town is working hard to address items that did not make the list.

Colleen Strapponi moved to adjourn the finance committee meeting. Dennis Madigan seconded the motion.

Chair Hodgen's closed the joint meeting at 8:16PM

Consent Items: Approval of May 13, 2021, Regular Minutes, Approval of May 24, 2021, Regular Minutes, Approval of June 14, 2021, Regular Minutes, Approval of June 30, 2021, Regular Minutes, Approval of August 9, 2021, Regular Minutes

Chair Keyes stated that these meeting minutes will be approved collectively. Selectman Arcudi stated that the May 24, 2021, meeting minutes will need to be reviewed and approved by KP Law, Town Counsel. Selectman Arcudi stated that in a vote during the May 24, 2021, a Selectperson voted no, Selectman Arcudi stated a reason needs to be recorded in the meeting minutes prior to the Board approving the minutes. The May 24, 2021, minutes will not be approved at tonight's meeting. Selectman Hazard stated that in the June 30, 2021, meetings there are typos that need to be corrected after approval.

Selectman Arcudi moved to approve the of May 13, 2021, Regular Minutes, June 14, 2021, Regular Minutes, June 30, 2021, Regular Minutes, August 9, 2021 Regular Minutes. Selectwoman Hazard seconded the motion.

Arcudi – Aye, Hazard – Aye, Keyes – Aye

Accept the grant award of \$300 from the Firefighters Charitable Foundation for the Fire Departments Equipment Program. Chair Keyes read the letter regarding the grant award from Chief Daige. Chair Keyes recognized the letter to the Fire Department from Frank Tepedino, President of the Firefighters Charitable Foundation. Matthew Berger spoke of the grant process and stated that this grant will be applied to providing more batteries for the Fire Department.

Selectman Hazard moved to accept the \$300 grant award from the Firefighters Charitable Foundation for the Fire Department Program. Selectman Arcudi seconded the motion.

Arcudi – Aye, Hazard – Aye, Keyes - Aye

Appointments and Resignations

Appointment of Michael Colainni to the Hopedale Housing Authority as a Tenant Board Member, effective September 13, 2021, 5 Year Term.

Chair Keyes read the letter provided by Michael Colainni regarding this appointment. Town Administrator Schindler stated that the Town solicited this appointment because it is a Tenant Board Member.

Selectman Arcudi moved to appoint Michael Colainni to the Hopedale Housing Authority as a Tenant Board Member, effective September 13, 2021 for a 5 year term.. Selectman Hazard seconded the motion.

Arcudi – Aye, Hazard – Aye, Keyes – Aye

Appointment of Charles Duczakowski to the Hopedale Council on Aging, effective immediately
Chair Keyes stated the Board received the talent bank form for Charles. Carole Mullen, COA Director stated that Charles has been involved with the meals on wheels program for many years, he has a firsthand understanding of the predominant services that the COA provides and has ample experience with assisting in senior services.

Selectman Arcudi moved to appoint Charles Duczakowski to the Hopedale Council on Aging effective September 13, 2021 for a year term. Selectwoman Hazard seconded the motion.

Arcudi – Aye, Hazard – Aye, Keyes – Aye

Resignation of Call Firefighter Candidate Alex Carchio from the Hopedale Fire Department, effective immediately.

Selectwoman Hazard move to accept the resignation of Call Firefighter Candidate Alex Carchio from the Hopedale Fire Department effective immediately. Selectman Arcudi seconded the motion.

Hazard – Aye, Arcudi – Aye, Keyes – Aye

Resignation of Call Firefighter Candidate, Robert Hansen from the Hopedale Fire Department, effective immediately

Chair Keyes read the resignation letter provided by Chief Daige. The Board of Selectmen and Chief Daige wish the best for Robert Hansen and wish him good health.

Selectwoman Hazard moved to accept the resignation of Call Firefighter Candidate, Robert Hansen from the Hopedale Fire Department effective immediately. Selectmen Hazard seconded the motion.

Arcudi – Aye, Hazard – Aye, Keyes – Aye

New Business

Selectman Arcudi moved to move the agenda item Petition Received re: Neighborhood Opposition to Board Vote on Overdale Parkway from New Business Item 4 to Item 1. Selectwoman Hazard seconded the motion.

Arcudi – Aye, Hazard – Aye, Keyes – Aye

Town Administrator Schindler acknowledge that the petition letter has been received by the Town, the Selectboard and Town Counsel. Schindler stated that there has been a request to have some discussion at a parks commission meeting. Selectman Hazard asked Attorney Klein if she is comfortable with the research that was done on the articles. Chair Keyes stated that Attorney Klein has done her due diligence in regard to the conclusion she came to. Attorney Klein stated that the title research done indicated that this portion of Overdale Parkway has no evidence that it is under the care and custody of the Park Commission and there is no evidence that the portion is under Article 97. Selectwoman Hazard asked Attorney Klein to clarify the amendment to a warrant article mentioned in the petition letter. Attorney Klein stated that an amendment was considered, to petition general court, she feels that we cannot extrapolate a great deal from this because it was passed over during that time. Attorney Klein stated again, there is a substantial amount of evidence that states this road is not a portion of Article 97. Chair Keyes opened the meeting to resident comments.

Resident Stephanie Thomas, 12 Overdale Parkway, stated that the opposition letter is to convey that the past precedence that has been set regarding the unpaved portion of Overdale parkway since 1916, states that is been used as parklands, used as a park entrance and has been maintained by the Parks Commission. Thomas stated that from her research this was validated in litigation in 2003 and upheld an appeal by Judge Kilburn, Chief Judge of Land Court. Thomas questioned the due diligence of the Attorneys regarding the Overdale Parkway Selectboard decision. Thomas referenced Article 33 from a 1985 special town meeting warrant, she stated that there were revised minutes that that reflect article 33, that ruled the article out of order. This upheld the unanimous vote of the park commission that denied the land release request to develop the parks access road. Attorney Klein stated that the motion regarding sending this to the general court was voted to pass over, by unanimous voice vote. Attorney Klein stated that the original deeds from 1916 deeded these parcels of land that create all of Overdale Parkway, to the Town, not the parks commission. The fact that the parks commission may have spent some monies on this portion of land does not mean that it is parklands. Attorney Klein stated that in her opinion is under the care and control of the Selectboard. Attorney Klein stated that if a deed does not specify who will have care and custody by default it falls to the Selectboard. Thomas stated that GL c. 45 Section 1 should apply because the Selectboard has not appropriated this land for over 20 years meaning this land should be considered a Parklands. Attorney Klein stated that a road is not a town common, Klein stated that this is definitely a road and there is no disputing this fact. It may provide access to the parklands however it is not considered parklands; it is a road. Thomas believes that this is still not a road. Selectman Arcudi stated that regarding the gate on the road, it was requested by the residents in 1972, due to safety reasons that were residentially driven. Chair Keyes stated that this portion of land has been title searched and reviewed by multiple attorneys, the due diligence is there. Thomas asked the Selectboard to respond to the six questions from the petition letter. Selectman Arcudi mentioned that in previous meeting minutes it is written that Joe Antonellis reviewed each town meeting from 1918-1999 and determined that the land deeded to the town was never deeded to parklands. Also, in 1999 the Chairman of the Parks, Mr. Espinet, agreed with the findings of Joe Antonellis. Town Administrator Schindler stated the petition letter questions will be responded to after discussing with Town Counsel. Chair Keyes stated that the 703ft of land being discussed is not parklands, the Selectboard accepted a gift based on the research and confirmation regarding this. Attorney Klein clarified that the Selectboard accepted a gift that had been deeded to the Town over 100 years prior pursuant to the article from 1985. Some residents expressed concern regarding access to the parklands. Chair Keyes stated that the Selectboard is not eliminating access to the parklands the gate will be removed and there will be parking spaces added to a cul-de-sac. Selectman Arcudi stated that currently there is no parking spaces for Hopedale resident's that do not live on Overdale Parkway. Resident Jennifer Beater, 3 Overdale Parkway stated that there is room to park on the street. Chair Keyes confirmed with Jennifer that there are no official parking spaces.

Open STM warrant, Set Date of Town Meeting, List of Proposed Articles

Town Administrator Schindler stated the tentative dates for special town meeting are Saturday, October 16, 2021 and a rain date of Saturday, October 23, 2021. Schindler proposed a start time of 11AM, she stated this time works for the Town Clerk as well. Chair Keyes stated that the Selectboard needs to be aware of fall sports and that some residents may not be able to attend due to scheduling. Schindler suggested that the board vote for the warrant to be closed on September 23, 2021.

Selectwoman Hazard moved to open the special town meeting warrant. Selectman Arcudi seconded the motion.

Arcudi – Aye, Hazard – Aye, Keyes – Aye

Accept Award of AFG Grant in the amount of \$291,326.19 for the Purchase of Self-Contained Breathing Apparatus (SCBA) for Hopedale Fire Department

Chief Daige spoke to the grant application process. Lt. Berger submitted the grant on the Hopedale Fire Departments behalf. Chief Daige stated that this equipment is critical to the Fire Department. The Hopedale Fire Departments share of the grant is \$14,566.31. The Selectboard praised Matt Berger and Chief Daige's efforts.

Selectman Arcudi moved to accept the award of AFG grant amount \$291,326.19 for the purchase of self-contained breathing apparatus (SCBA) for the Hopedale Fire Department and committing to the \$14,566.31 the 5%. Selectwoman Hazard seconded.

Arcudi – Aye, Hazard – Aye, Keyes – Aye

Report from Carole Mullen, Hopedale COA Director, General Discussion on COA Programs and Services, Impact of COVID on COA and Hopedale Seniors

Carole Mullen stated that this item will be moved to a future agenda due to the length of the meeting already. Carole invited the selectboard to the October 28, 2021, COA meeting. Selectman Arcudi stated he will attend.

Selectman Arcudi moved to defer this item to a future agenda. Selectwoman Hazard seconded the motion.

Arcudi – Aye, Hazard – Aye, Keyes – Aye

Old Business

Accept Green Communities Designation Grant Contract in the amount of \$137,759 (to be signed by Chair)

Schindler stated that within the next year the monies need to be spent, after this the Town can apply for competitive grants. Chair Keyes thanked everyone involved in this grant process.

Selectwoman Hazard moved to accept the green community's designation grant in the amount of \$137,759. Selectman Arcudi seconded the motion.

Arcudi – Aye, Hazard – Aye, Keyes – Aye

Update re: Ten Citizen Lawsuit, Hearing Date September 9, 2021, 2 pm

Schindler stated that the papers/arguments from the attorneys and the Judge, by the end of today, was supposed to review all of the information and provide an additional ruling by end of day tomorrow.

Update re: Remote Participation/Televised Meeting Policy

Schindler stated the Hopedale Cable is going to install some additional cameras, microphones, and television in the Draper room to assist with hybrid meetings. Visibility and audio are a priority when it comes to hybrid meetings. Currently, the Health Agent is encouraging that meetings continue on zoom especially, especially if there will be a large group attending. Some Boards are meeting in person. Once the Draper room is set up for hybrid meetings, the boards will need to schedule room use so there is no overlap. There is a deadline of November 1, 2021, for the draper room to be set up. Schindler is going to reach out to the Health Agent, Bill Fisher regarding if the meetings will be open to the public in person or if the Town will continue on zoom.

Finalize Selectboard Office Hours (to start 9/27)

Selectman Arcudi stated that will be available on September 28, 2021, from 5-630PM and September 29, 2021, 12-130PM.

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

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

Schindler stated that all of the information pertaining to the items below are in the packet.

Beyond Full Rent Payment Update – Excel Spreadsheet in Packet

Central Massachusetts Mosquito Control Project personnel will be in the community to respond to resident's concerns about mosquitoes in the area on the following dates: August 30, 2021, and September 7, 2021

Letters Received from Attorneys Lurie & Keavany Regarding Easements for Crossings & IRAP Grant

Award Letter to Full Circle Technologies for Electronic Permitting Grant Project

Award Letter to CMRPC for Hazardous Mitigation Plan Update Grant Project

Hopedale Public Schools FY20 DESE End of Year Report Audit Report

Requests for Future Agenda Items: Joint w/ Board of Health and Finance Committee – E.L. Harvey Service Review & Contract

Chair Keyes read the executive session paragraph.

Selectman Arcudi moved to enter into executive session per the paragraph that Chair Keyes read.

Selectwoman Hazard seconded the motion.

Arcudi – Aye, Hazard – Aye, Keyes – Aye

Executive Session:

For item # (3) To discuss strategy with respect to collective bargaining or litigation that an open meeting may have a detrimental effect on the litigation position of the public body and the chair so declares, which he does. **Purpose: Call Fire and Permanent Fire Union, Fire Chief Daige Present**

For item # (3) To discuss strategy with respect to collective bargaining or litigation that an open meeting may have a detrimental effect on the litigation position of the public body and the chair so declares, which he does. **Purpose: Collective Bargaining; Clerical, Public Works & Dispatch Units.**

Chair Keyes dissolved the meeting at 10:35pm

Submitted by:

Lindsay Mercier

Lindsay Mercier, Executive Assistant

Adopted: _____

**Selectboard
Regular Meeting Minutes
September 23, 2021, 6:00 pm**

Present: Chair Keyes, Selectman Arcudi, Selectwoman Hazard, Town Administrator Diana Schindler

Chair Keyes called the meeting to order at 6:01PM. Chair Keyes began the meeting with the Pledge of Allegiance.

Review Draft Town Meeting Warrant for Special Town Meeting on Saturday, October 16, 2021
The Town Meeting will start at 11AM. The rain date is set for October 23, 2021.

Town Administrator Schindler shared the draft of the special town meeting warrant.

Article one is the prior year bills of FY21, there are 4 total. The funding source will be current year expense funds. The town would be using FY22 funds but paying prior year bills. The Selectboard had questions or comments.

Article 2, to transfer \$10,000 from Council on Aging expense to Council on Aging salaries and wages. The COA Director, Carole Mullen informed Town Administrator Schindler that the salaries for van drivers have been paid through the transportation budget, however, they need to be paid through the wages budget. This article would correct the budget. The Selectboard had no questions or comments.

Article 3, to transfer the monies to fund contracts and expenses. The Treasurer/Collector – Salaries and Wages, to fund the contract with the Treasurer/Collector, \$15,000, Planning Board – Salaries and Wages, to fund administrative support, \$10,000, Health Officer – Expenses, to fund contracts with Salmon VNA & Septic inspections, \$5,000 and Library – Salaries and Wages, to fund Director contract, \$7,000. Town Administrator Schindler stated that regarding the Health Officer item, the Salmon VNA contract is not related to COVID. This contract is the regular support that they offer to the Town public health. Regarding the Planning Board – Salaries and Wages, Selectman Arcudi stated that the number feels reactive. Unlike the other items where there is known support, this item is just a place holder and would not be able to support this item until there is a plan. Chair Keyes stated that while yes, the Planning Board needs help, they should use the Town Counsel more than administrative assistance. Chair Keyes stated that the monies requested should be put towards Town Counsel and they should find operational support in other areas not to the tune of \$10,000. Town Administrator Schindler stated that the administrative support to the planning board would be routine items such as the application process, assisting with notices, hearing scheduling and planning and an ample number of other tasks. Selectman Arcudi stated that in the past there was a \$1,600 stipend for volunteers that would assist the planning board and he is more comfortable with that. The Town Administrator stated that there is a lot of tasks other than routine applications for the administrative assistance, such as time sensitive items after decisions are filed, the Town does not have updated Zoning Bylaws, etc. Schindler stated that the planning board will need more than a volunteer to get these tasks done. Selectman Arcudi stated that he feels that this is a reactive approach of \$10,000 without understanding where it's earmarked or how it will be spent is not the correct approach. Arcudi stated he would rather put this money aside for legal counseling on the process. Selectwoman Hazard stated that \$10,000 is too much but she wants to find the best way to support the planning board. Chair Keyes stated that an action item is to find the best way to support the planning board but as of now the Town Administrator will assist them with getting more legal counsel from KP Law.

Selectman Arcudi moved to remove the Planning Board – Salaries & Wages, to fund administrative support, \$10,000 from the Warrant.

Article Four, Capital purchases that have been discussed and recommended by the finance committee. There was an adjustment made to the matching SCBA amount to be the 5% of what we received from the grant totaling \$15,350. Chair Keyes stated that the number in the letter was around \$14,000, how did this number increase? Town Administrator Schindler stated that there must have been a miscalculation and corrected the number to \$14,567 as the grant letter stated. Schindler stated that the School Van item was increased to \$30,000 based on the schools' numbers.

Article Five, Selectman Arcudi asked what the split between the leaf machine and the small dump truck in case the town would rather the leaves picked up and not the small dump truck. Town Administrator Schindler stated that the leaf vac machine is \$220,000 the truck is \$72,000. Selectman Arcudi stated that he recommends making Article five two articles and separating these items. Chair Keyes and Selectman Hazard were in support of this recommendation.

Regarding Article Six, Seven and Eight, Town Administrator Schindler stated that there is no discussion except for once the Board settles on the estimates. Articles Nine and Ten do not have estimates as of yet.

Article Eleven, the right of way article, Schindler stated that Town Counsel feels that the engineers advising the Town to do the rights of entry may not get access to 17 of them. Counsel recommends that the Town puts this article on and include the temporary easements this time. The appraisal has not been completed as of yet, the number of \$40,000 is a rough estimate. This money can also be taken out of Chapter 90.

Article Twelve, this article is from the Water/Sewer Superintendent regarding the borrowing for water sourcing. If the Town agrees to spend the ARPA money, then this article can be passed over. Chair Keyes stated the Selectboard asked the Finance Committee to weigh in on this item. Town Administrator Schindler stated that the Finance Committee will be meeting on Monday to create their recommendation. Selectman Arcudi stated that the Finance Committee is an advisory board and that this is an important item that needs to be address on next week's agenda.

Article Thirteen, this article is from the Water/Sewer Department to move some land that is in conservation (under article 97) into a municipal purpose for the water tank. The Selectboard had no questions or comments regarding this article.

Chair Keyes asked if the Town will be putting a tentative article on the warrant in the event there is a land court decision regarding the citizens lawsuit. Town Administrator Schindler stated she is not sure what the article would state at this moment in time due to a lack of information and not having a decision made from the land court as of yet. Schindler stated that if the Board is interested in putting it on the draft tonight then they can do so, however, they would need to know the number of acres and money amount for the article. Selectman Arcudi stated that if there is an opportunity to have the article on this warrant than it would save the Town money by not having to schedule another Town Meeting. Chair Keyes stated that the board will pass over this item until more information is received from the land court.

Selectman Arcudi moved to approve the special town meeting warrant as presented with the changes made. Selectwoman Hazard seconded the motion.

Arcudi – Aye, Hazard – Aye, Keyes – Aye

Future Agenda Items

Selectwoman Hazard asked to have the planning board on the next scheduled meeting to further discuss how to best assist the board. Steve Chaplin, Chair of the Planning Board weighed in and stated that the Planning Board primarily needs administrative assistance, preparing for meetings, notifying abutters, scheduling hearing, meeting deadlines and many other items. Chair Keyes informed Steve Chaplin that the Selectboard removed the line item for planning board administrative assistance, stating that \$10,000 for administrative/operational and clerical was not necessarily correct for the type of work. Chair Keyes stated that the board would like to provide the Planning Board with legal counsel work. Chair Keyes stated that this is a critical item to get the planning board the support it needs and will look into administrative assistance, whether it is a monetary stipend like it has in the past or exploring other options.

Chair Keyes read the executive session paragraph and stated that the board will not be returning to a regular meeting.

Selectwoman Hazard moved to enter executive session per the paragraph the Chair Keyes read.

Selectman Arcudi second the motion.

Arcudi – Aye, Hazard – Aye, Keyes – Aye

Executive Session: - Board will not be returning to Open Meeting

In accordance with G.L. c. 30A, §21(a)(3) (Purpose #3), to discuss strategy with respect to collective bargaining and litigation that an open meeting may have a detrimental effect on the bargaining and litigation position of the public body and the chair so declares, which he does. (DLR Case No. JLM-21-8830).

Chair Keyes dissolved the meeting at 6:52PM

Submitted by:

Lindsay Mercier

Lindsay Mercier, Executive Assistant

Adopted: _____

**HOPEDALE COUNCIL ON AGING
43 HOPE STREET
HOPEDALE, MA 01747
(508)634-2208
hopedalecoa@comcast.net**

DATE: September 21, 2021

TO: Hopedale Select Board

FROM: Hopedale Council on Aging



RE: Request to Accept Donation

The Council on Aging has requested and received a generous donation in the amount of Three thousand eight hundred dollars (\$3,800.00) from the Hopedale Friends of Elders. The funds have been donated for the purpose of supplementing payment to Senior Center class instructors. Absent town funding, without the receipt of additional monies, fluctuating and insufficient participant fees jeopardize the Sr. Center's ability to offer a variety of programs. The Council on Aging is so grateful to the Friends for their assistance in serving the interests of Hopedale's older adults.

Carole Mullen

TOWN OF HOPEDALE

SCHEDULE OF DEPARTMENTAL PAYMENTS TO TREASURER

No: _____

Council on Aging
DEPARTMENT

DATE: 9/21/2021

SCHEDULE NUMBER

FROM WHOM	SOURCE	ACCT#	AMOUNT
	ACCOUNT	<i>Instructor Class</i>	
		<i>Payments & Fees</i>	
<i>Hopedale Friends of Elders, Inc.</i>	<i>Donation</i>	<i>28-541-4320 - 4630</i>	<i>\$3,800.00</i>
		TOTAL	<i>\$3,800.00</i>

No. _____

Date: _____

To the Accountant,

The above is a detailed list of moneys collected by HCOA, amounting in to an aggregate to ~~Three thousand eight hundred dollars~~ 3800 Dollars for the period end June 30, 2021 which has been paid to the Treasurer, whose receipt is held therefor.

_____ Treasurer

Carole Mullen
Council on Aging, Director
Department & Title

HOPEDALE COUNCIL ON AGING
43 HOPE STREET
HOPEDALE, MA 01747
(508)634-2208
hopedalecoa@comcast.net

June 19, 2021

Dear Sally and Tara,

The Council on Aging would like to request financial assistance from the Hopedale Friends of Elders for the following items and programs:

1. COA Annual Barbecue - June 29, 2021

Fee for entertainer DJ Mike Rutowski:	\$ 250.00
Subsidization of \$9.00 p.p. meal charge at \$4.00 p.p. up to 50 persons	\$ 200.00

2. Donation for FY'22 to offset Instructor fees \$ 3,800.00

The COA has no town funding to pay for class instructors. While we charge a nominal fee from participants, fluctuating attendance often results in a shortfall in the *Instructor Fee Revolving* account. The goal is to have participant fees cover at least 50% of the costs required to pay the instructors. We will continue to rely on donations and small grants to address the deficit. I am in the process of exploring grant opportunities for this purpose.

3. A potential concern is the COA town-funded FY'22 transportation budget-line has been reduced from FY'21 levels by \$1,432. While not a huge concern, it is uncertain as we start the fiscal year whether the COA will experience a demand in services that exceeds the current funding level.

I would be happy to meet to discuss these issues in detail.
As always, thank you all for your efforts and consideration of our requests.

Carole Mullen

ATTACHMENT A.
FY2022 IRAP APPLICATION COVER SHEET
(Please type in text boxes provided below)

1. Name of Applicant:
2. Address of Applicant:
3. Nature of Applicants Business:
4. Contact Person:
5. Title:

Email:

Phone: ()

6. Descriptive Name of Project:

7. Total project cost: \$

Proposed Start Date:

Completion Date: _____

- | 8. Funding Sources:
Cost: | Amount: | Percent of Project |
|------------------------------|---------|--------------------|
|------------------------------|---------|--------------------|

IRAP Request:	\$ <u>500,000</u>	10% _____
---------------	-------------------	-----------

Source of Private Sector Project Funding:

- | | | |
|----------|----------|---------|
| 1. | \$ _____ | % _____ |
| 2. _____ | \$ _____ | % _____ |
| 3. | \$ _____ | % _____ |

9. Project location (limits):

11. Railroad Milepost From: _____ To: _____

12. Is Project fully designed by a qualified design firm? Yes: No:

13. Has Project received necessary environmental approvals? Yes: No:

14. Are there any right-of-way considerations that will need to be addressed/resolved for this project to be constructed? Yes: No:

15. In the space provided below provide a brief project description (limit of 250 words) of the work that will be constructed under the proposed IRAP project.

The applicant certifies that the information provided in this application is true and correct, and that the private sector matching funding commitments shown above are in place and are not contingent upon any other project funding award that may be anticipated or pending.

Signature:  _____

Title: President

Name: Michael R. Milanoski
(Please Type)

Date: June 16, 2021

ATTACHMENT B.

Proposed Project Schedule and Estimated Timelines

*IRAP Projects should be completed within 12 months from the MassDOT Notice to Proceed Date. MassDOT Notice to Proceed should not be planned any earlier than **September 1, 2021**.*

Hopedale Task's Phase 1	September	October	November	December	January	February	March	April	May	June
Finalize Design Details										
Procure Materials										
Site Prep and Grading										
Track /Turnout Construction										
Surfacing/Tamping										

Instructions: *complete the project schedule table to reflect the status of your project and the remaining implementation tasks and work that will be completed under contract with MassDOT. Insert additional rows as needed.*

If the applicant has already completed pre-construction activities that cannot be funded under the IRAP contract – any completed readiness activities such as design, permitting and ROW work should be included along with the completion date to show MassDOT that project implementation work has already begun, or is already completed – this information is important from a project readiness standpoint and is also evidence of the applicant’s capacity to undertake and manage the project. The schedule should indicate an understanding of the sequencing of activities and who will be responsible for completion of various tasks and construction activities.

ATTACHMENT C. Budget and Budget Narrative

ESTIMATE HOPEDALE TRANSLOADING AND STAGING TRACKS PHASE 1 IRAP FY22			
<i>Identified Project Costs/Major Expense Components</i>	<i>IRAP Funds</i>	<i>Private Funds</i>	<i>Project Budget</i>
ALL MATERIAL FOR THE ENTIRE SCOPE OF WORK	\$279,188	\$186,125	\$465,313
FINE GRADE AND PLACE FIRST 4" OF BALLAST	\$66,764	\$44,509	\$111,273
CONSTRUCT WOOD TIE PLAIN TRACK 3700 TRACK FEET	\$72,994	\$48,663	\$121,657
CONSTRUCT TURNOUTS	\$13,648	\$9,099	\$22,747
BALLAST AND SURFACE ALL TRACKS AND TURNOUTS 2 FULL PASSES	\$36,625	\$24,417	\$61,042
INSTALL HAYES WD BUMPER 1 EA AND 1 HAYES HBX	\$20,720	\$13,814	\$34,534
DESIGN / ENGINEERING / MOBILIZATION	\$12,667	\$8,445	\$21,112
<i>Total Project Cost Estimate (Inclusive of Material and Labor):</i>	\$502,607	\$335,071	\$837,678

Budget Narrative Notes:

Instructions: Complete the Budget table provided above inserting additional rows as needed. Applicants are reminded that the maximum FY2022 MassDOT IRAP grant contribution for a proposed project cannot **exceed \$500,000**, nor can the MassDOT IRAP funding requested represent more than 60 percent (**60%**) of the total project cost.

If the project is anticipated to be completed after the end of State Fiscal Year 2022 (June 30, 2022) provide an estimated breakdown of costs planned in State Fiscal Year 2022 and those in future State Fiscal Years.

Use the space below the table to include a brief budget narrative to identify how budgeted costs were determined (working estimates, preliminary quotes received or based on prior experience) and indicate underlying budget assumptions and the basis for identified costs (unit price x quantity for example) wherever possible.

A. Project Need Statement –

The Grafton and Upton Railroad (GU) has recently purchased 196 acres of industrial zoned land in Hopedale, Massachusetts. GU has significant interest in this parcel of land from several large warehouse users, some of which are dedicated long haul truck routes traveling from the south along the Gulf of Mexico to the GU or surrounding areas. GU is applying for an IRAP grant to begin construction of two rail sidings to serve multiple warehouses which will begin construction in 2021. The project to create a rail served industrial park is a major financial undertaking and shows GU's consistent commitment to improving freight rail in the Commonwealth of Massachusetts. The project will consist of several phases and will be exclusive to freight rail users. Phase 1 will relocate the existing main to accommodate the two (2) tracks adjacent to future warehouses.

The Grafton and Upton Railroad Company (GU) is experiencing year over year double digit freight growth with the addition of new customers that are creating manufacturing and recycling jobs in the Commonwealth. To ensure new customers were able to continue to expand their freight service on the GU, and the Commonwealth of Massachusetts this IRAP is submitted for Phase I for the Hopedale Industrial Rail Complex. As GU continues to invest into their properties, it is evident that GU's efforts to bring more jobs to the Commonwealth proves more track and freight rail infrastructure is needed to support these manufacturing jobs and to keep up with the anticipated 34% freight rail growth as stated in the latest state rail transportation plan.

B. Project Description –

The first phase is designed to open a million square feet of development on 100 acres of industrial land. Site access is in the engineering phase for an initial 250,000 square foot food grade storage warehouse which will include cold storage. The parties interested in this warehouse space will receive over 3,000 carloads per year. This warehouse will be designed to handle the unloading of over 20 railcars per day with rail access on each side of the building.

In addition, the first phase will include 100,000 square foot warehouse various building materials, including room for expansion of GU's existing customer Georgia Pacific and other lumber and steel products for the construction industry, which is expected to handle over 500 railcars per year. This siding will include flat outdoor space for unloading center beam, flat and open top railcars as well as open rail docks and building doors; allowing all types of railcars to be unloaded.

Therefore, to serve these two warehouses and high capacity rail users, GU will require a run-around track with switches at each end coming from the main track as well as two industry lead switches with phase 1 construction which is shovel ready. Given the lead time on rail materials and time for construction, GU needs to begin the rail phase as soon as possible to align with construction of the two warehouses. The customers cannot occupy the warehouse without rail access and rail is the only means of inbound product for storage and distribution. Safety improvements are easily found with the addition of each track which gives each customer a safe place to operate without interference or risk of running into another company's work area.

Further, the staging capabilities on each track for the repositioning of railcars to be loaded/unloaded will allow the customers of the GU to have an adequate car supply available to keep material moving so it does not have to be stored on site and they can operate a proper supply chain. Safety improvements are also found in the transloading process by designing a rail yard and transloading facility that can accommodate all the customers and align with efficient business operations and process maps that make safe operations more possible within the transloading. This gives each customer enough track space to reposition the required number of cars to meet their customer's needs and project deadlines.

C. Project Readiness –

GU has a proven track record to compete IRAP project on-time and budget and commits to competing this by June 30, 2022 and is ready to begin upon notice to proceed. The project's right of way is complete, design is complete

(attached), all required permits completed, railroad is sponsoring this project and paying match, no third party coordination required, and this site is properly zoned by the town of Upton as Industrial Land and has been used as rail yard for over 130 years.

D. Project Schedule

The project will be self-performed by GU railroad employees under our forced account as other awards from MassDOT and will begin as soon as award is made by MassDOT. Materials are standard stock materials that are readily available. Upon award construction will begin and will be completed no later than June 30, 2022.

Hopedale Task's Phase 1	September	October	November	December	January	February	March	April	May	June
Finalize Design Details										
Procure Materials										
Site Prep and Grading										
Track /Turnout Construction										
Surfacing/Tamping										

E. Anticipated Project Benefits

GU, in partnership with several customers located in Hopedale that are committed to bringing and retaining manufacturing jobs within the Commonwealth. This IRAP will help the GU and their customers continue their success within the Commonwealth and add hundreds of jobs at this location and many more indirectly throughout the Commonwealth. The GU has a proven track record with successful implementation of IRAP awards and adding job growth to the Commonwealth. GU is committed to creating jobs in the Commonwealth, achieving state environmental and emissions reductions goals and maintaining a strong safety culture.

F. Budget

The Public Private Partnership Project Budget is \$835,000 of which 40% will be funded by GU in amount of \$335,000. The IRAP match requested amount is 60% or \$500,000.

ESTIMATE HOPEDALE TRANSLOADING AND STAGING TRACKS PHASE 1 IRAP FY22			
<i>Identified Project Costs/Major Expense Components</i>	<i>IRAP Funds</i>	<i>Private Funds</i>	<i>Project Budget</i>
ALL MATERIAL FOR THE ENTIRE SCOPE OF WORK	\$279,188	\$186,125	\$465,313
FINE GRADE AND PLACE FIRST 4" OF BALLAST	\$66,764	\$44,509	\$111,273
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CONSTRUCT TURNOUTS	\$13,648	\$9,099	\$22,747
BALLAST AND SURFACE ALL TRACKS AND TURNOUTS 2 FULL PASSES	\$36,625	\$24,417	\$61,042
INSTALL HAYES WD BUMPER 1 EA AND 1 HAYES HBX	\$20,720	\$13,814	\$34,534
DESIGN / ENGINEERING / MOBILIZATION	\$12,667	\$8,445	\$21,112
Total Project Cost Estimate (Inclusive of Material and Labor):	\$502,607	\$335,071	\$837,678

Detailed budget estimate included in Appendix.

PLAN OF LAND GRAFTON & UPTON RAILROAD

364 WEST STREET
(WORCESTER COUNTY)
HOPEDALE, MASSACHUSETTS

REGISTRY USE ONLY

OWNER
GRAFTON & UPTON RAILROAD COMPANY
42 WESTBORO ROAD
NORTH GRAFTON, MA 01536

ASSESSORS REFERENCE
ASSESS. PARCEL ID: 2-5-0
(TRACTS 1, 2, 3, 4, & 5)
ASSESS. PARCEL ID: 3-1-0
(18 AC. TRACT)

**WORCESTER COUNTY
PLAN REFERENCES**

PB 826 PL 85 PB 352 PL 81
PB 817 PL 4 PB 338 PL 92
PB 788 PL 85 PB 226 PL 113
PB 782 PL 3 PB 193 PL 63
PB 674 PL 52 PB 169 PL 46
PB 480 PL 59 PB 13 PL 73

DEED REFERENCE

DEED BK 64914 PAGE 311
(TRACTS 1 & 2)
DEED BK 63493 PAGE 35
(TRACTS 3, 4, & 5)
DEED BK 60267 PAGE 112
(18 AC. TRACT)

**LIBRARY OF CONGRESS
PLAN REFERENCES**

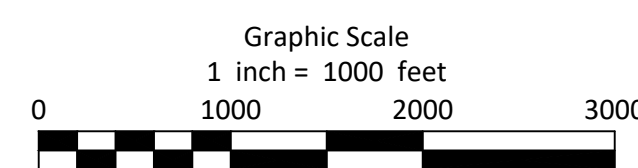
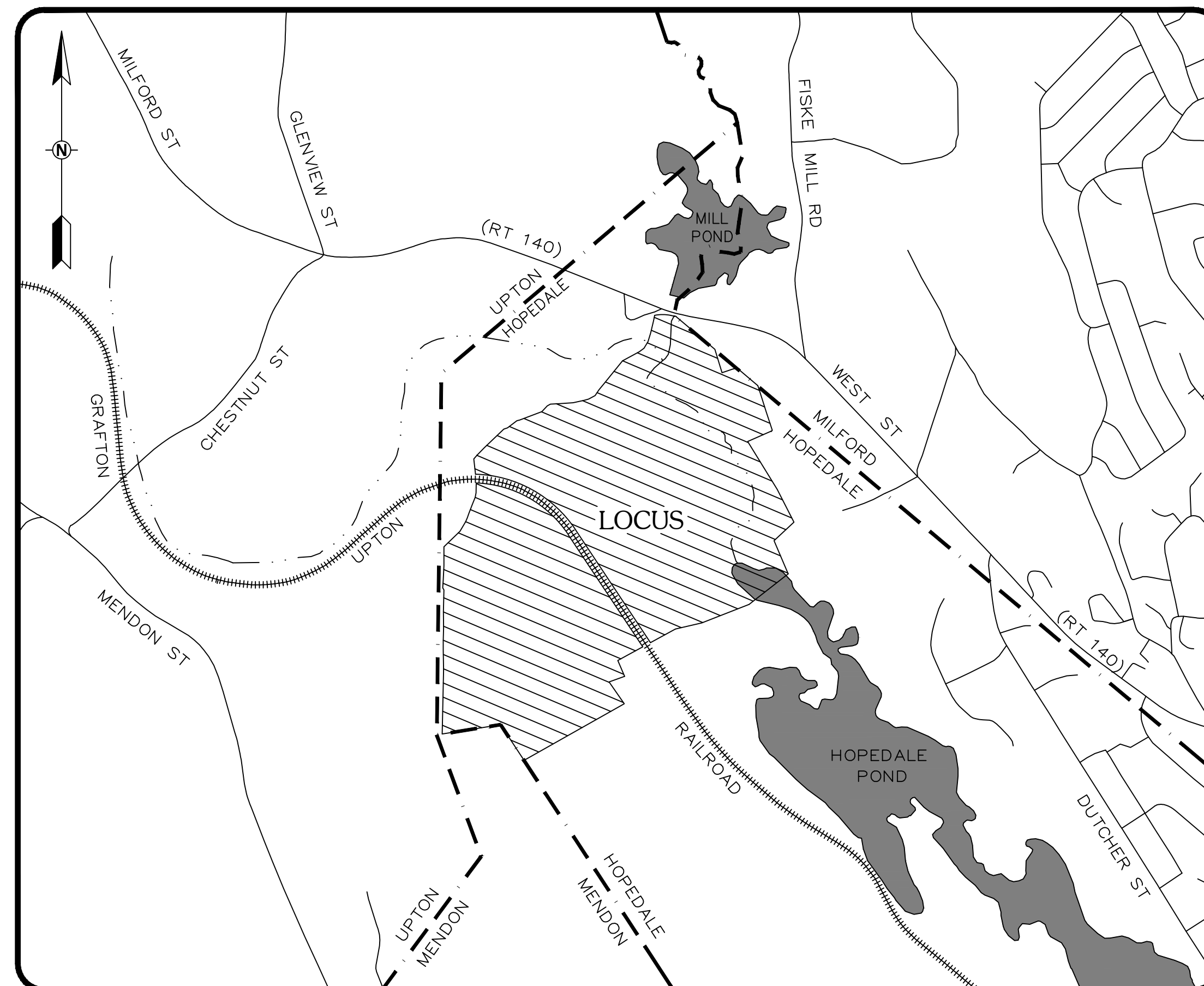
1904 PLAN OF LAND BY THE PARK
COMMISSIONERS OF HOPEDALE
1870 TOWN MAP OF MILFORD
BY F.W. BEERS & CO.
1857 MAP OF WORCESTER COUNTY
BY H.F. WALLING
1851 TOWN MAP OF MILFORD
BY O. HARKNESS
1851 TOWN MAP OF UPTON
BY H.F. WALLING
1830 TOWN MAP OF MENDON
BY NEWELL NELSON

**HOPEDALE TOWN RECORD
PLAN REFERENCES**

1960 HOPEDALE ASSESSOR'S MAP
1949 HOPEDALE TOWN BOUNDARY
PLAN BY R. SMETHURST
1915 HOPEDALE ASSESSOR'S MAP

**RAILROAD
PLAN REFERENCES**

1909 GRAFTON & UPTON
RAILROAD PLANS
BY R.E. ALLEN & SON



PLAN NOTES

1. THE PROPERTY LINES AND EXISTING CONDITIONS SHOWN HEREON ARE THE RESULT OF AN ON-THE-GROUND INSTRUMENT SURVEY PERFORMED BY LIGHTHOUSE LAND SURVEYING LLC BETWEEN MARCH AND APRIL 2021.
2. SURVEY TRAVERSE POINTS 2, 19, AND 50 WERE OBSERVED WITH A CARLSON BRX6+ GPS RECEIVER USING THE STATIC NOAA BASED ONLINE POSITIONING USER SERVICE (OPUS) MAINTAINED BY THE NATIONAL GEODETIC SURVEY.

HORIZONTAL DATUM:
MASSACHUSETTS STATE PLANE - MAINLAND ZONE NAD83 (2011)
EPOCH 2010.00 - US FEET
VERTICAL DATUM:
NORTH AMERICAN VERTICAL DATUM OF 1988 (GEOID 12B) - US FEET
3. ALL ON-THE-GROUND OBSERVATIONS WERE PERFORMED USING LEICA TS12 (3") ROBOTIC TOTAL STATIONS.
4. THE LEGAL STATUS OF THE STREETS AND/OR WAYS SHOWN HEREON, WHETHER THEY ARE PUBLIC OR PRIVATE, WAS NOT MADE PART OF THIS SURVEY.
5. CARPENTER ROAD IS AN ANCIENT WAY OF VARIABLE WIDTH RANGING FROM 1 ROD TO 2 RODS WIDE AND BOUNDED BY INTERMITTENT STONEWALLS ON BOTH SIDES. THE WAY IS DESCRIBED IN DEEDS DATING BACK TO 1844 (SEE DB 387 PG 630) AND ILLUSTRATED ON MAPS AND PLANS DATED BACK TO 1830 (SEE TOWN OF HOPEDALE & LIBRARY OF CONGRESS PLAN REFERENCES).
6. OWNERS NAMES SHOWN HEREON ARE BASED UPON ASSESSORS INFORMATION OBTAINED AS OF THE DATE OF THE SURVEY. IT DOES NOT REPRESENT A CERTIFICATION OF TITLE NOR DOES IT GUARANTEE THE OWNERSHIP OF LOCUS OR ADJUTING PROPERTIES.

Curve #	Length	Radius	Delta	Chord Direction	Chord Length
C1	157.03	389.39	23° 06' 22"	S89° 45' 17"E	155.971
C2	83.98	389.39	12° 21' 26"	S72° 30' 49"W	83.818
C3	241.01	389.39	35° 27' 47"	N84° 04' 00"E	237.183
C4	11.85	2033.00	0° 20' 03"	S75° 03' 08"E	11.854
C5	130.24	2032.97	3° 40' 15"	S77° 03' 17"E	130.222
C6	391.78	1052.00	21° 20' 16"	S54° 24' 04"E	389.520

Line #	Length	Direction
L1	611.32	N01° 10' 56"E
L2	190.60	N00° 43' 30"W
L3	86.96	N00° 48' 48"W
L4	121.33	N01° 28' 22"E
L5	158.71	N00° 23' 50"W
L6	207.24	N01° 18' 13"E
L7	73.76	N04° 41' 04"E
L8	137.72	N02° 40' 48"E
L9	180.94	N00° 10' 59"W
L10	213.37	N45° 50' 41"E
L11	104.02	N30° 29' 59"E
L12	42.98	N24° 10' 06"E
L13	39.26	N19° 26' 45"E
L14	93.41	N21° 30' 38"E
L15	75.06	N21° 39' 14"E
L16	44.94	N09° 49' 09"E
L17	93.19	N01° 27' 44"E
L18	83.13	N05° 10' 38"W
L19	148.17	N05° 57' 57"W
L20	47.28	N40° 01' 39"E

Line #	Length	Direction
L21	98.54	N44° 34' 16"E
L22	257.96	N46° 19' 28"E
L23	36.94	N72° 25' 40"E
L24	113.81	N52° 37' 15"E
L25	27.23	N75° 50' 35"E
L26	225.22	N69° 13' 17"E
L27	75.37	N44° 01' 10"E
L28	34.27	N60° 51' 44"E
L29	94.33	N86° 01' 15"E
L30	122.29	N86° 41' 04"E
L31	110.05	N77° 13' 17"E
L32	42.99	N74° 14' 55"E
L33	69.44	N61° 46' 09"E
L34	66.27	N34° 20' 25"E
L35	85.76	N39° 16' 01"E
L36	270.37	N39° 00' 48"E
L37	182.46	N61° 20' 45"E
L38	55.91	N53° 44' 19"E
L39	73.35	N31° 21' 50"E
L40	85.92	N16° 41' 40"E

Line #	Length	Direction
L41	115.29	N13° 54' 01"E
L42	58.03	N10° 38' 22"E
L43	38.36	S78° 12' 06"E
L44	24.17	N49° 50' 37"W
L45	271.20	S78° 53' 24"E
L46	238.25	S79° 47' 16"E
L47	286.02	S73° 39' 46"E
L48	66.00	N46° 35' 09"E
L49	232.77	S16° 57' 24"E
L50	109.93	N72° 13' 36"E
L51	41.66	N77° 14' 36"E
L52	29.90	S49° 50' 37"E
L53	34.75	S49° 50' 37"E
L54	52.24	S18° 21' 23"E
L55	209.16	S17° 27' 17"E
L56	187.45	S18° 07' 53"E
L57	14.70	S45° 45' 29"W
L58	82.80	S61° 19' 22"W
L59	165.00	S23° 13' 37"E
L60	157.42	S70° 28' 28"W

I CERTIFY TO THE EXISTENCE OF THE FOLLOWING:

THIS SURVEY AND PLAN WERE PREPARED IN ACCORDANCE WITH THE PROCEDURAL AND TECHNICAL STANDARDS FOR THE PRACTICE OF LAND SURVEYING IN THE COMMONWEALTH OF MASSACHUSETTS, TITLE 250 CMR 6.00.

THE PROPERTY LINES SHOWN ON THIS PLAN ARE THE LINES DIVIDING EXISTING OWNERSHIPS, AND THAT THE LINES OF STREETS AND WAYS ARE THOSE OF PUBLIC OR PRIVATE STREETS OR WAYS ALREADY ESTABLISHED, AND THAT NO NEW LINES FOR DIVISION OF EXISTING OWNERSHIP OR FOR NEW WAYS ARE SHOWN.

THIS PLAN HAS BEEN PREPARED IN ACCORDANCE WITH THE RULES AND REGULATIONS OF THE REGISTERS OF DEEDS.

DRAFT

APRIL 15, 2021
PROFESSIONAL LAND SURVEYOR DATE

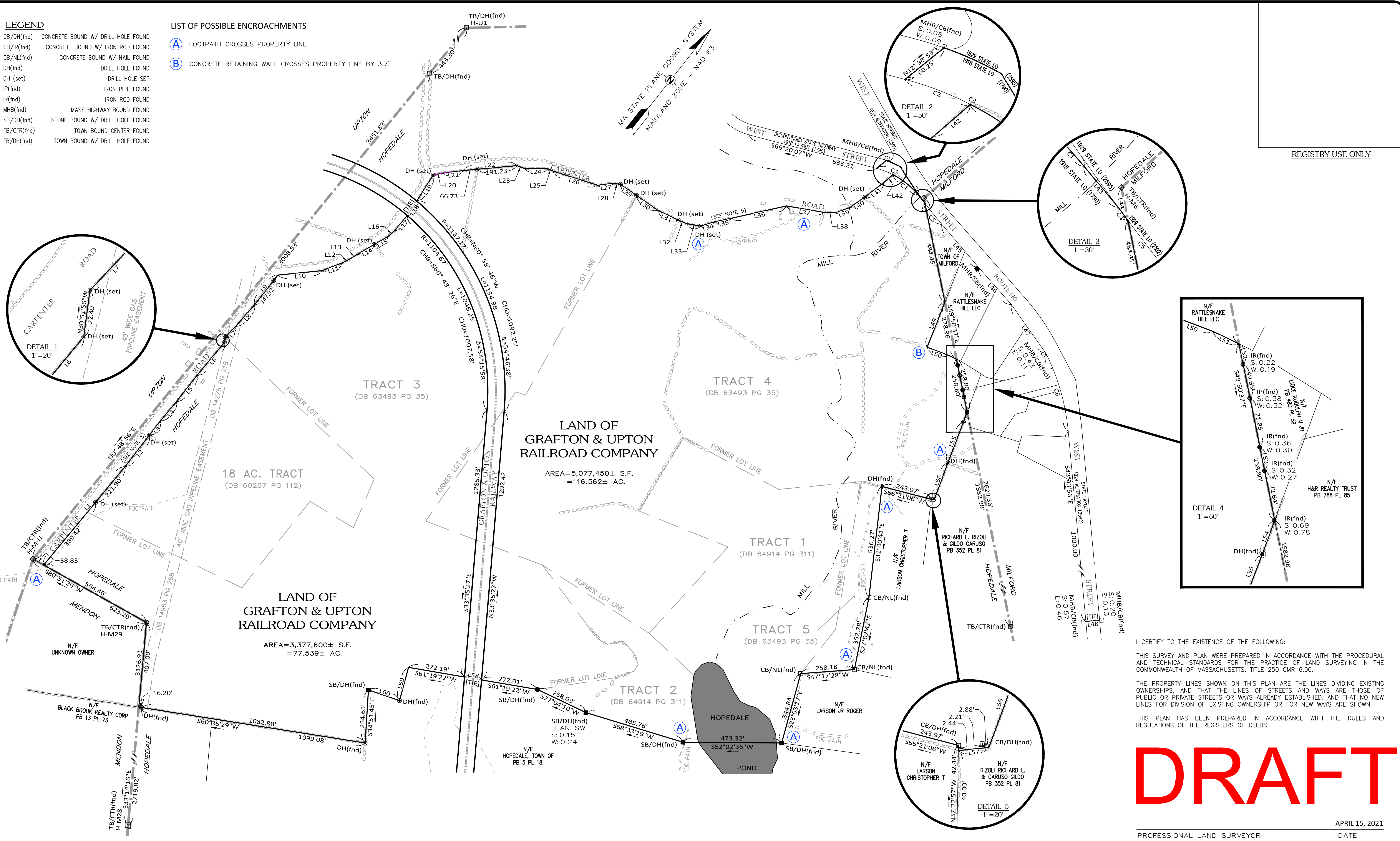
<p>REVISIONS:</p> <table border="1"> <thead> <tr> <th>REV #</th> <th>DATE</th> <th>DESCRIPTION</th> </tr> </thead> <tbody> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> </tbody> </table> <p>DRWN BY: ZRB CHK'D BY: PSB APRVD BY: RWR</p>	REV #	DATE	DESCRIPTION										<p>PREPARED BY:</p> <p>EDC Engineering Design Consultants, Inc. 32 Turnpike Road Southborough, Massachusetts (508) 480-0225</p>	<p>PROJECT:</p> <p>GRAFTON & UPTON RAILROAD 364 WEST STREET (WORCESTER COUNTY) HOPEDALE, MASSACHUSETTS</p>	<p>TITLE:</p> <p>EXISTING BOUNDARY PLAN OF LAND</p> <p>PREPARED FOR:</p> <p>Grafton & Upton Railroad Company 42 Westboro Road North Grafton, Massachusetts 01536</p>	<p>DATE:</p> <p>APRIL 15, 2021</p> <p>1 OF 2</p> <p>EDC PROJECT NUMBER 3659</p>
REV #	DATE	DESCRIPTION														

LEGEND

- CB/DH(fnd) CONCRETE BOUND W/ DRILL HOLE FOUND
- CB/R(fnd) CONCRETE BOUND W/ IRON ROD FOUND
- CB/NL(fnd) CONCRETE BOUND W/ NAIL FOUND
- DH(fnd) DRILL HOLE FOUND
- DH (set) DRILL HOLE SET
- IP(fnd) IRON PIPE FOUND
- IR(fnd) IRON ROD FOUND
- MHB(fnd) MASS HIGHWAY BOUND FOUND
- SB/DH(fnd) STONE BOUND W/ DRILL HOLE FOUND
- TB/CTR(fnd) TOWN BOUND CENTER FOUND
- TB/DH(fnd) TOWN BOUND W/ DRILL HOLE FOUND

LIST OF POSSIBLE ENCROACHMENTS

- (A)** FOOTPATH CROSSES PROPERTY LINE
- (B)** CONCRETE RETAINING WALL CROSSES PROPERTY LINE BY 3.7'



REGISTRY USE ONLY

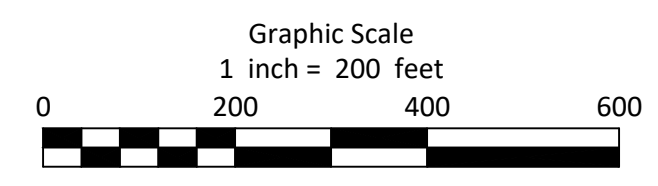
I CERTIFY TO THE EXISTENCE OF THE FOLLOWING:
 THIS SURVEY AND PLAN WERE PREPARED IN ACCORDANCE WITH THE PROCEDURAL AND TECHNICAL STANDARDS FOR THE PRACTICE OF LAND SURVEYING IN THE COMMONWEALTH OF MASSACHUSETTS, TITLE 250 CMR 6.00.
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DRAFT

APRIL 15, 2021
 PROFESSIONAL LAND SURVEYOR DATE

REV #	DATE	DESCRIPTION

DRWN BY: ZRB
 CHK'D BY: PSB
 APRVD BY: RWR



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

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

TITLE:
**EXISTING BOUNDARY
 PLAN OF LAND**
 PREPARED FOR:
 Grafton & Upton Railroad Company
 42 Westboro Road
 North Grafton, Massachusetts 01536

DATE:
 APRIL 15, 2021
 2 OF 2
 EDC PROJECT NUMBER
 3659

PHASE 1 - RED TEXT

PHASE 2- BLUE TEXT

WAREHOUSES 350' x 750'

PHASE 1 - NEW EAST SIDING 2286 TRK FT

PHASE 1-RELOCATE
EXISTING MAIN 8' EAST AND
REHABILITATE 2267 TRK FT

PHASE 1 -
SWITCHES (2)

FOUR TRACKS ON 16' CENTERS

PHASE 2 - NEW MAIN (RUN-AROUND) 2247 TRK FT

PHASE 2 - NEW WEST SIDING 2227 TRK FT

MISC CONNECTING TRACKS 608 TRK FT

PHASE 1 - SWITCHES (2)

GRAFTON AND UPTON RAILROAD
42 WESTBORO ROAD, NORTH GRAFTON MA 01536
OFFICE PHONE 508-839-1701 MARKETING 860-627-8924
EMAIL Info@graftonuptonrr.com

STATION

NORTH HOPEDALE

MP

NA TO MP

TRACK

SEND MARK

FILE

TITLE

**PROPOSED NEW
TRACKS AT
NORTH HOPEDALE**

SCALE

SEE P10

DIT OF REV

A B K

ADD NO.

01/03/05

SEE FILE MARK

01/03/05/01/03

DRAWN DATE

BCW 01/03

APPROVED DATE

EXISTING
TRACK CENTER
SINGLE TRACK
MAIN

NORTH
END

OPTIONAL
#10 EQUILATERAL TURNOUT

OPTIONAL
#10 EQUILATERAL TURNOUT

82'

#10 EQ TURNOUT

#10 LR TURNOUT

#10 EQUILATERAL
TURNOUT

#10 LH
TURNOUT

SOUTH END

GRAFTON AND UPTON RAILROAD
42 WESTBORO ROAD, NORTH GRAFTON MA 01536
OFFICE PHONE 508-839-1701 MARKETING 860-627-8924
EMAIL info@graftonuptonrr.com

STATION

HP TO HP
N/A N/A

TRACK

BENCH MARK
SEE P/D

TITLE

**PROPOSED NEW
TRACKS AT
NORTH HOPEDALE**

SCALE
SEE P/D

SHT OF REV
3 3 K

JOB NO.

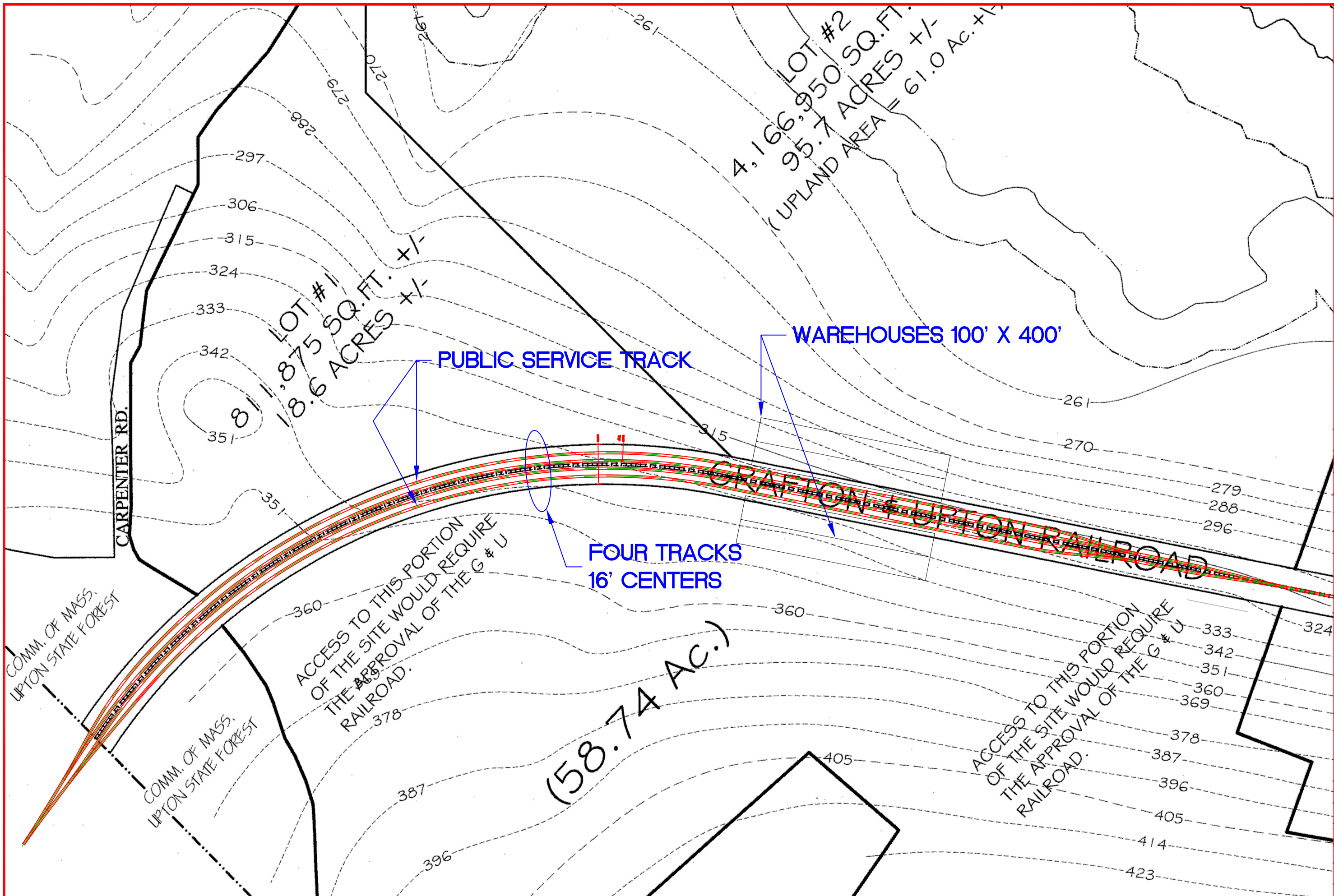
GNU035

DWG FILE NAME
GNU035C3.DWG

DRAWN DATE

BCW 6/21

APPROVED DATE



GRAFTON AND UPTON RAILROAD
 42 WESTBORO ROAD, NORTH GRAFTON MA 01536
 OFFICE PHONE 508-839-1701 MARKETING 860-627-8924
 EMAIL info@graftonuptonrr.com

STATION	
MP	TO MP
N/A	N/A
TRACK	
BENCH MARK	
SEE P/D	
TITLE	

PROPOSED NEW TRACKS AT NORTH HOPEDALE

SCALE	SEE P/D
SHT. OF	REV
1 3	K
JOB NO.	GNU035
DWG. FILE NAME	GNU035C3.DWG
DRAWN	DATE
BCW	6/21
APPROVED	DATE

ESTIMATING SPREAD SHEET, GNU NORTH HOPEDALE 6-15-21 REV FOR TOTAL PROJECT AND PHASE I (IN

ALL MATERIAL FOR THE ENTIRE SCOPE OF WORK 7271 TRK FT 6 TURNOUTS

DESCRIPTION	COST/HR	QTY	U/M	HRS	M/U	EXTENDED
TIE 7" INDUSTRIAL GRADE NEW	\$ 69.00	500 EA		1 1.10		\$ 37,950.00
TIE 7" VERY GOOD RELAY	\$ 35.00	1390 EA		1 1.10		\$ 53,515.00
TIE PLATE, DOUBLE SHOULDER 5.5" EXCELLENT RELAY	\$ 10.50	9668 EA		1 1.10		\$ 111,665.40
SPIKES 5/8" CUT 100LB KEGS	\$ 89.00	250 KEG		1 1.10		\$ 24,475.00
115RE RAIL, EXCELENT RELAY	\$ 797.00	340 TON		1 1.10		\$ 298,078.00
JOINT BARS 115RE TOELESS RELAY 4 OR 6 HOLE	\$ 88.00	440 EA		1 1.10		\$ 42,592.00
COMPROMISE JOINT BAR 115RE X 112RE	\$ 478.00	8 PR		1 1.10		\$ 4,206.40
TRK BOLT, 1 X 6 NEW W/NUT & LK WSHR	\$ 2.60	2688 SET		1 1.10		\$ 7,687.68
RAIL ANCHOR DRIVE ON 5.5" BASE	\$ 2.05	8321 EA		1 1.10		\$ 18,763.86
SWITCH TIMBER KIT #10 TURNOUT	\$ 8,000.00	6 EA		1 1.10		\$ 52,800.00
TURNOUT KIT COMPLETE, 115RE #10 SAMPSON PT EX RELAY	\$ 14,800.00	6 SET		1 1.10		\$ 97,680.00
SWTICH OPERATING STAND, CENTURY 51A	\$ 950.00	6 ASSY		1 1.10		\$ 6,270.00
HAYES HBX DERAIL	\$ 980.00	6 ASSY		1 1.10		\$ 6,468.00
GRAVEL, PROCESSED	\$ 18.50	2415 TON		1 1.10		\$ 49,145.25
BALLAST AREMA 4-4A	\$ 19.50	4834 TON		1 1.10		\$ 103,689.30

\$ 914,985.89

PHASE 1 3700 TRK FT, 4 TURNOUTS

COST/HR	QTY	U/M	HRS	M/U	EXTENDED
\$ 69.00	250 EA		1 1.10		\$ 18,975.00
\$ 35.00	695 EA		1 1.10		\$ 26,757.50
\$ 10.50	4834 EA		1 1.10		\$ 55,832.70
\$ 89.00	125 KEG		1 1.10		\$ 12,237.50
\$ 797.00	150 TON		1 1.10		\$ 131,505.00
\$ 88.00	220 EA		1 1.10		\$ 21,296.00
\$ 478.00	4 PR		1 1.10		\$ 2,103.20
\$ 2.60	1344 SET		1 1.10		\$ 3,843.84
\$ 2.05	4108 EA		1 1.10		\$ 9,263.54
\$ 8,000.00	3 EA		1 1.10		\$ 26,400.00
\$ 14,800.00	4 SET		1 1.10		\$ 65,120.00
\$ 950.00	4 ASSY		1 1.10		\$ 4,180.00
\$ 980.00	3 ASSY		1 1.10		\$ 3,234.00
\$ 18.50	1415 TON		1 1.10		\$ 28,795.25
\$ 19.50	2600 TON		1 1.10		\$ 55,770.00

\$ 465,313.53

ROUGH GRADE, FINE GRADE AND PLACE FIRST 4" OF BALLAST

DESCRIPTION	COST/HR	QTY	U/M	HRS	M/U	EXTENDED
CONSTRUCTION SUPERVISOR EIC	\$ 50.00	1 EA		160 1.00		\$ 8,000.00
FOREMAN	\$ 67.00	1 EA		160 1.35		\$ 14,472.00
OPERATOR	\$ 49.00	4 EA		160 1.35		\$ 42,336.00
LABORER	\$ 46.00	2 EA		160 1.35		\$ 19,872.00
CREW/TOOL TRUCK	\$ 63.33	1 EA		160 1.25		\$ 12,666.00
EXCAVATOR	\$ 89.80	2 EA		160 1.25		\$ 35,920.00
BULLDOZER	\$ 28.00	2 EA		160 1.25		\$ 11,200.00
ROLLER, 20 TON	\$ 66.00	2 EA		160 1.25		\$ 26,400.00
TRACTOR TRAILER DUMP	\$ 64.60	4 EA		160 1.25		\$ 51,680.00

\$ 222,546.00

PHASE 1 - ROUGH GRADE, FINE GRADE AND PLACE FIRST 4" OF BALLAST

COST/HR	QTY	U/M	HRS	M/U	EXTENDED
\$ 50.00	1 EA		80 1.00		\$ 4,000.00
\$ 67.00	1 EA		80 1.35		\$ 7,236.00
\$ 49.00	4 EA		80 1.35		\$ 21,168.00
\$ 46.00	2 EA		80 1.35		\$ 9,936.00
\$ 63.33	1 EA		80 1.25		\$ 6,333.00
\$ 89.80	2 EA		80 1.25		\$ 17,960.00
\$ 28.00	2 EA		80 1.25		\$ 5,600.00
\$ 66.00	2 EA		80 1.25		\$ 13,200.00
\$ 64.60	4 EA		80 1.25		\$ 25,840.00

\$ 111,273.00

CONSTRUCT WOOD TIE PLAIN TRACK 7271 TRACK FEET

DESCRIPTION	COST/HR	QTY	U/M	HRS	M/U	EXTENDED	COMMENTS
CONSTRUCTION SUPERVISOR EIC	\$ 50.00	1 EA		250 1.35		\$ 16,875.00	
FOREMAN	\$ 67.00	1 EA		250 1.35		\$ 22,612.50	
OPERATOR	\$ 49.00	2 EA		250 1.35		\$ 33,075.00	
LABORER	\$ 46.00	4 EA		250 1.35		\$ 62,100.00	
CREW/TOOL TRUCK	\$ 63.33	1 EA		250 1.25		\$ 19,790.63	
EXCAVATOR	\$ 89.80	1 EA		250 1.25		\$ 28,062.50	
GRAPPLE TRUCK	\$ 129.00	1 EA		250 1.25		\$ 40,312.50	
TRACTOR TRAILER DUMP	\$ 64.60	1 EA		250 1.25		\$ 20,187.50	
PETTIBONE SPEED SWING	\$ 65.70	1 EA		250 1.25		\$ 20,531.25	
SPIKER, NORDCO MODEL CX OR EQUAL	\$ 150.00	1 EA		250 1.25		\$ 46,875.00	
AIR COMPRESSOR	\$ 19.50	1 EA		250 1.25		\$ 6,093.75	

\$ 316,515.63

CONSTRUCT WOOD TIE PLAIN TRACK 3700

COST/HR	QTY	U/M	HRS	M/U	EXTENDED
\$ 50.00	1 EA		125 1.35		\$ 8,437.50
\$ 67.00	1 EA		125 1.35		\$ 11,306.25
\$ 49.00	2 EA		125 1.35		\$ 16,537.50
\$ 46.00	3 EA		125 1.35		\$ 23,287.50
\$ 63.33	1 EA		125 1.25		\$ 9,895.31
\$ 89.80	1 EA		100 1.25		\$ 11,225.00
\$ 129.00	1 EA		125 1.25		\$ 20,156.25
\$ 64.60	1 EA		0 1.25		\$ -
\$ 65.70	1 EA		125 1.25		\$ 10,265.63
\$ 150.00	1 EA		40 1.25		\$ 7,500.00
\$ 19.50	1 EA		125 1.25		\$ 3,046.88

\$ 121,657.81

RELOCATE EXISTING MAIN TRACK, INSTALL 170 REPLACEMENT TIES, SPOT BALLAST AND SPOT TAMP

DESCRIPTION	COST/HR	QTY	U/M	HRS	M/U	EXTENDED	COMMENTS
CONSTRUCTION SUPERVISOR EIC	\$ 50.00	1 EA		40 1.35		\$ 2,700.00	
FOREMAN	\$ 67.00	1 EA		40 1.35		\$ 3,618.00	

RELOCATE EXISTING MAIN TRACK, INSTALL 170 REPLACEMENT TIES, SPOT BALLAST AND SPOT TAMP

COST/HR	QTY	U/M	HRS	M/U	EXTENDED	COMMENTS
\$ 50.00	1 EA		20 1.35		\$ 1,350.00	
\$ 67.00	1 EA		20 1.35		\$ 1,809.00	

OPERATOR	\$ 49.00	2 EA	40 1.35 \$	5,292.00	\$ 49.00	2 EA	20 1.35 \$	2,646.00
LABORER	\$ 46.00	3 EA	40 1.35 \$	7,452.00	\$ 46.00	3 EA	20 1.35 \$	3,726.00
CREW/TOOL TRUCK	\$ 63.33	1 EA	40 1.25 \$	3,166.50	\$ 63.33	1 EA	20 1.25 \$	1,583.25
EXCAVATOR	\$ 89.80	1 EA	40 1.25 \$	4,490.00	\$ 89.80	1 EA	20 1.25 \$	2,245.00
GRAPPLE TRUCK	\$ 129.00	1 EA	40 1.25 \$	6,450.00	\$ 129.00	1 EA	20 1.25 \$	3,225.00
TRACTOR TRAILER DUMP	\$ 64.60	1 EA	20 1.25 \$	1,615.00	\$ 64.60	1 EA	10 1.25 \$	807.50
PETTIBONE SPEED SWING	\$ 65.70	1 EA	40 1.25 \$	3,285.00	\$ 65.70	1 EA	20 1.25 \$	1,642.50
SPIKER, NORDCO MODEL CX OR EQUAL	\$ 71.56	1 EA	20 1.25 \$	1,789.00	\$ 71.56	1 EA	10 1.25 \$	894.50
TORSION BEAM TAMPER	\$ 179.10	1 EA	15 1.25 \$	3,358.13	\$ 179.10	1 EA	8 1.25 \$	1,791.00
PRODUCTION REGULATOR	\$ 72.00	1 EA	10 1.25 \$	900.00	\$ 72.00	1 EA	6 1.25 \$	540.00
AIR COMPRESSOR	\$ 19.50	1 EA	40 1.25 \$	975.00	\$ 19.50	1 EA	20 1.25 \$	487.50
				\$ 45,090.63				\$ 22,747.25

INSTALL HAYES HBX DERAILS 6 EACH								INSTALL HAYES HBX DERAILS (4)						
DESCRIPTION	COST/HR	QTY	U/M	HRS	M/U	EXTENDED	COMMENTS	COST/HR	QTY	U/M	HRS	M/U	EXTENDED	COMMENTS
CONSTRUCTION SUPERVISOR EIC	\$ 50.00	1 EA	16	1.35	\$	1,080.00		\$ 50.00	1 EA	2	1.35	\$	135.00	
FOREMAN	\$ 67.00	1 EA	16	1.35	\$	1,447.20		\$ 67.00	1 EA	8	1.35	\$	723.60	
OPERATOR	\$ 49.00	1 EA	16	1.35	\$	1,058.40		\$ 49.00	1 EA	8	1.35	\$	529.20	
LABORER	\$ 46.00	2 EA	16	1.35	\$	1,987.20		\$ 46.00	2 EA	8	1.35	\$	993.60	
CREW/TOOL TRUCK	\$ 63.33	1 EA	16	1.25	\$	1,266.60		\$ 63.33	1 EA	8	1.25	\$	633.30	
PETTIBONE SPEED SWING	\$ 65.70	1 EA	16	1.25	\$	1,314.00		\$ 65.70	1 EA	0	1.25	\$	-	
AIR COMPRESSOR	\$ 19.50	1 EA	16	1.25	\$	390.00		\$ 19.50	1 EA	4	1.25	\$	97.50	
					\$	8,543.40								\$ 3,112.20
DESIGN / ENGINEERING					\$	2,000.00								\$ 2,000.00
SURVEY STAKE-OUT					\$	4,000.00								\$ 4,000.00
CONTRACTOR MOBILIZATION - DEMOBILIZATION					\$	12,000.00								\$ 12,000.00
						GRAND TOTAL \$ 1,768,048.81								PHASE I GRAND TOTAL \$ 837,680.29

LURIE FRIEDMAN LLP

ONE MCKINLEY SQUARE
BOSTON, MA 02109

DAVID E. LURIE

617-367-1970
dlurie@luriefriedman.com

September 28, 2021

BY EMAIL

Brian Riley, Esq.
KP Law

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

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

Dear Brian:

I see that the Hopedale Select Board's agenda for this Wednesday, Sept. 29, 2021, which was posted late yesterday afternoon, includes the following item: "Request for IRAP Grant Support; Michael Milanoski, President, GU RR". It appears that the IRAP grant referenced in this item is for work at 364 West Street, which as you know is Forestland subject to the pending c. 61 litigation.

It is shocking that the Board would even consider placing on its agenda support for funding work that the Superior Court has specifically enjoined. See attached order dated September 24, 2021 issued by Superior Court Judge Karen Goodwin. The Appeals Court has also specifically enjoined transferring the Town's rights to the c. 61 Forestland--on which most of the work funded by the IRAP grant would occur. See attached order dated April 8, 2021 issued by Appeals Court Single Justice William Meade.

Supporting funding for the enjoined work would be a violation of both of the above-referenced court orders, as it would undermine the Town's rights in the Forestland and would facilitate its destruction.

Both the Appeals Court and the Superior Court have found that there is a likelihood of success on the merits of this case and that the Town's c. 61 rights in the Forestland must be preserved immediately. Indeed, in the words of the Superior Court:

The purpose of the [appeals court] injunction was to temporarily prevent the town from releasing the Chapter 61 limitations on a large portion of the Section 61 Forestland owned by the Trust. By clearing the Forestland, the Railway, in essence, is treating the Forestland as though it were released from Chapter 61 constraints, a result the appeals court injunction sought to prevent.

LURIE FRIEDMAN LLP

Brian Riley, Esq.
September 28, 2021
Page 2

... The court agrees with the Appeals Court that the plaintiffs have at least a reasonable likelihood of success on the merits. . . . That the plaintiffs would suffer irreparable harm requires little discussion. Once trees are removed, they are gone for the foreseeable future.

... For the above reasons, it is **ORDERED THAT** ... [the Railroad is] **TEMPORARILY ENJOINED from any further alteration or destruction of the 130.18 acres of Forestland....**

The Board has a mandatory duty to continue to preserve the Forestland pending further order of the Courts. Voting to support funding that would destroy the Forestland would be an egregious breach of duty as well as a violation of the Courts' orders.

For these reasons, please confirm that the Board will withdraw the above-referenced item regarding funding railroad development of the Forestland from its agenda immediately and will not vote to support such item.

Very truly yours,

s/ David E. Lurie

David E. Lurie

Encl.

cc: Clients
Donald Keavany, Esq.

COMMONWEALTH OF MASSACHUSETTS
APPEALS COURT

ELIZABETH REILLY, et al)
)
 Plaintiffs)
) SINGLE JUSTICE No.
 vs.) WORCESTER SUPERIOR COURT
) No. 2185-cv-00238
 TOWN OF HOPEDALE, et al,)
)
 Defendants)

**MEMORANDUM IN SUPPORT OF PETITION OF JON DELLI
PRISCOLI, MICHAEL R. MILANOSKI, ONE HUNDRED FORTY
REALTY TRUST, AND GRAFTON & UPTON RAILROAD COMPANY
FOR INTERLOCUTORY RELIEF PURSUANT TO G.L.c. 231 §118 ¶1**

The Superior Court (“Court”) abused its discretion by committing a clear error of law when it entered a preliminary injunction against Defendants, Grafton & Upton Railroad Company, One Hundred Forty Realty Trust (“Trust”) Jon Delli Priscoli, and Michael Milanoski, (collectively, the “Railroad Defendants”) on Count II of Plaintiffs’ Verified Complaint without examining the Plaintiffs’ likelihood of success on the merits of their claim. The Court did not find – because Plaintiffs cannot establish – that ten-taxpayers have standing to reverse a discretionary decision by the Selectboard of the Town of Hopedale (“Town”) to waive and release a purported right of first refusal (“ROFR”) option under G.L.c. 61. Because the Plaintiffs lack standing, they cannot succeed on the merits of Count II. Furthermore, *assuming arguendo*, that the Plaintiffs have standing, they

still have failed to establish a likelihood of success on their claim that the Selectboard did not have authority to waive and release the ROFR option, because the decision to exercise, or not exercise a ROFR is an executive decision, reserved solely to the Selectboard. The Court's failure to analyze Plaintiffs' likelihood of success on Count II against the Railroad Defendants was a clear error of law, requiring dissolution of the preliminary injunction.

FACTUAL AND PROCEDURAL BACKGROUND

The underlying lawsuit represents a collateral attack on a settlement agreement and a dismissal with prejudice entered into between the Railroad Defendants and the Town of Hopedale (the "Town") following contested litigation in the Land Court. *See, Town of Hopedale v. Grafton & Upton Railroad Company et al.*, 20 MISC 000467. RA/162-165. In the Land Court case, the Town, through its Selectboard, asserted that it possessed a valid and enforceable G.L.c. 61 ROFR with respect to 130.18 acres of forestland after an October 2020 Special Town Meeting ("STM") voted to acquire and appropriate \$1,175,000 for this land. RA/19. The Railroad Defendants denied that the Town had a valid and enforceable ROFR, asserted that the Trust owned the subject land, and also filed a Petition before the Surface Transportation Board (STB) asserting that the Town's Land Court claims were federally preempted. RA/163-164.

After denying the Town's request for injunctive relief, the Land Court (Rubin, J.) ordered the parties to mediation screening and the parties successfully mediated the case before Leon Lombardi, formerly a Justice of the Land Court. *Id.* Pursuant to the Settlement Agreement, *inter alia*, the Town acknowledged the Trust's ownership of all of the subject property (RA/189-204), the Selectboard agreed to release and waive the Town's purported c. 61 ROFR (RA/197), and the Railroad Defendants agreed to transfer various parcels of property totaling 64+- acres to the Town in consideration of a payment of \$587,500 (RA/190-197). The Town intended to use \$587,500 of the \$1,175,000 appropriated at the STM to purchase the 64+- acres. *Id.* The Railroad Defendants also agreed to donate 20+- acres of land to the Town. RA/196. The Settlement Agreement included various other material terms including no-build restrictions imposed on the Railroad Defendants, and cooperation as to municipal water source preservation and development. RA/190-199. The Settlement Agreement required the Railroad to dismiss its STB petition, which it did. RA/203. Significantly, the Settlement Agreement included a severability clause. RA/201. The parties filed a Stipulation of Dismissal of the Land Court case with prejudice in February 2021. RA/164.

The Plaintiffs did not seek to intervene in the Land Court case. Rather, they filed this lawsuit to collaterally attack the Settlement Agreement. In Count I, Plaintiffs allege that the Town's STM appropriation of funds to acquire all of the

subject property did not authorize the Selectboard to spend part of the funds to acquire part of the subject property. RA/035-037. In Count II, Plaintiffs allege that the Selectboard had no authority to waive and release the ROFR and further seek to compel the Selectboard to recover the waived and released ROFR and acquire the subject land from the Railroad Defendants. RA/037-038. Count III alleges that the Town had dedicated the subject land—which it never actually acquired—as parklands. RA/039.

On March 3, 2021, Plaintiffs moved for a preliminary injunction solely on Count I. RA/004. Plaintiffs explicitly stated that their request for injunction was “only as to the imminent illegal expenditures by the Board under the Settlement Agreement,” i.e., Count I alleging violations of G.L. c. 40, § 53. See Docket No. 6, p 3. RA/284. The Superior Court (Frison, J.) denied Plaintiffs’ request for a preliminary injunction. RA/011. Plaintiffs appealed, and a Single Justice of the Appeals Court (Meade, J.) reversed, issuing an Order dated April 8, 2021, finding that Plaintiffs “demonstrated some likelihood of success in establishing that the town's purchase of the land, pursuant to the settlement agreement, would be a statutory violation.” (Emphasis added.). Addendum to Petition, Ex. B.

After that brief interlocutory appellate practice, all parties cross-moved for judgment on the pleadings. RA/013-014. The Court heard these motions on September 9, 2021. RA/016. While the parties were awaiting the dispositive

motions hearing, the Railroad Defendants began site work on the portions of land that they would be retaining, which included harvesting of trees. RA/288-290. On the morning of the hearing, Plaintiffs, who had known of the site work for weeks, filed an “Emergency Motion to Preserve Status Quo” seeking to enjoin the site work. RA/229. The Court allowed the motion from the bench and entered a Temporary Restraining Order. RA/016. The Court invited additional briefing on Plaintiffs’ Emergency Motion, which the parties submitted on September 13, 2021. RA/295-350.

On September 24, 2021, the Court allowed Plaintiffs’ motion, this time as a preliminary injunction. Addendum to Petition, Ex. A. As to Plaintiffs’ likelihood of success, the Court wrote only that it “agrees with the Appeals Court [i.e., Justice Meade’s April 8 analysis] that the plaintiffs have at least a reasonable likelihood of success on the merits and adopts its analysis here.” *Id.* However, Justice Meade’s analysis of likelihood of success was limited to Count I, which addressed Plaintiffs’ claim that the Town’s purchase of land pursuant to the Settlement Agreement violated municipal spending restrictions under G.L. c. 40, § 53. *See* Order dated April 8, 2021 (“I find that the plaintiffs have demonstrated some likelihood of success in establishing that the town's purchase of the land, pursuant to the settlement agreement, would be a statutory violation.”). (Emphasis added.) Addendum to Petition, Ex. B. Justice Meade focused entirely on Plaintiffs’ claim

that they were “protecting the public funds from unauthorized expenditure.” *Id.* This is a markedly different issue and claim than Plaintiffs’ claim under Count II to recover and enforce a c. 61 ROFR option that was waived and released by the Selectboard. Thus, the Court failed to apply the correct legal standard to Plaintiffs’ request for injunctive relief against the Railroad Defendants. Had the Court applied the correct standard, it would have found that the Plaintiffs had not established a likelihood of success on Count II against the Railroad Defendants because 1) Plaintiffs failed to establish standing and 2) the decision to exercise, or not exercise a c. 61 ROFR was a discretionary act reserved solely to the Selectboard. The Selectboard exercised their discretion to waive and release the ROFR. Accordingly, the preliminary injunction entered by the Court on September 24, 2021 should be dissolved.

ARGUMENT

A. STANDARD OF REVIEW.

The Appeals Court reviews a grant of a preliminary injunction for abuse of discretion. *Eaton v. Federal Natl. Mort. Assn.*, 462 Mass. 569, 574 (2012). The Court determines “whether the judge applied proper legal standards and whether there was reasonable support for his evaluation of factual questions.”

Doe v. Superintendent of Schs. of Weston, 461 Mass. 159, 164 (2011), quoting *Commonwealth v. Fremont Inv. & Loan*, 452 Mass. 733, 741 (2008). “The trial

court's legal conclusions, however, are 'subject to broad review and will be reversed if incorrect.'" *LeClair v. Norwell*, 430 Mass. 328, 331 (1999), quoting *Packaging Indus. Group, Inc. v. Cheney*, 380 Mass. 609, 616 (1980).

B. BY ADOPTING JUSTICE MEADE'S REASONING ON COUNT I, THE COURT INCORRECTLY APPLIED THE PRELIMINARY INJUNCTION STANDARD ON COUNT II.

The Court erred in entering a preliminary injunction against the Railroad Defendants because it relied solely upon and adopted the reasoning set forth in Justice Meade's April 8, 2021 Order on Count I to find that Plaintiffs had established a likelihood of success on Count II. This was clear error as Justice Meade's April 8 Order only determined that Plaintiffs were entitled to a preliminary injunction on Count I against the Town which was brought pursuant to G.L. c. 40, § 53 which specifically permits ten taxpayers to bring an action to enjoin unlawful municipal expenditures. Justice Meade found that Plaintiffs had "some" likelihood of success on their claim under Section 53 in Count I to prevent the Town from expending funds to acquire less than all of the subject forestland, when the Town Meeting had authorized funds to purchase all of the forestland.

Count II was not before Justice Meade and therefore Justice Meade never evaluated Plaintiffs' likelihood of success on the merits of that claim. Indeed, Justice Meade acknowledged this, stating: "I am mindful of the defendants' arguments that the settlement agreement allows the public to salvage some of the

benefits of its right of first refusal, and that permanently preventing the execution of that agreement could result in the town receiving none of the forestland.” In other words, if the Plaintiffs succeed on Count I and invalidate the Town’s ability to acquire the property pursuant to the Settlement Agreement,¹ then the Town receives none of the land. Only under Count II do Plaintiffs seek recovery of the land from the Railroad Defendants, purportedly on behalf of the Town by claiming that the Selectboard had no authority to waive and release a c. 61 ROFR.

Accordingly, Justice Meade’s reasoning and decision under Count I cannot be adopted and applied to Count II. Rather, the Court was required to separately analyze Plaintiffs’ likelihood of succeeding on the merits of Count II against the Railroad Defendants, which it failed to do.

To obtain a preliminary injunction, the moving party must show: (1) a likelihood of success on the merits; (2) that irreparable harm will result from denial of the injunction; and (3) that, in light of the moving party's likelihood of success on the merits, the risk of irreparable harm to the moving party outweighs the potential harm to the nonmoving party in granting the injunction. *See Packaging Indus. Group, Inc.*, 380 Mass. 609. "The sine qua non of this [preliminary

¹ The Settlement Agreement includes additional material consideration and a severability clause; it therefore survives the potential invalidation of the property transfer.

injunction] inquiry is likelihood of success on the merits: if the moving party cannot demonstrate that he is likely to succeed in his quest, the remaining factors become matters of idle curiosity." *Revolutionary Clinics II, Inc. v. City of Cambridge*, 36 Mass. L. Rep. 213 (Super. Ct. Jan. 24, 2020), quoting *New Comm. Wireless Servs., Inc. v. SprintCom, Inc.*, 287 F.3d 1, 9 (1st Cir. 2002). Plaintiffs' claims of irreparable harm "must be evaluated as part of a 'sliding scale analysis' in which 'the predicted harm and the likelihood of success on the merits [are] juxtaposed and weighed in tandem.'" *Governo Law Firm, LLC v. CMBG3 Law, LLC*, 35 Mass.L.Rep. 587 (Super. Ct. June 18, 2019), quoting *Ross-Simons of Warwick, Inc. v. Baccarat, Inc.*, 102 F.3d 12, 19 (1st Cir. 1996).

C. PLAINTIFFS HAVE NO STANDING TO PURSUE COUNT II.

Plaintiffs' standing is a prerequisite to their success on the merits of Count II. *See Rental Prop. Mgt. Servs. v. Hatcher*, 479 Mass. 542, 546-547 (2018) ("where the plaintiff lacks standing to bring an action, the court lacks jurisdiction of the subject matter and must therefore dismiss the action."). If Plaintiffs do not have standing, then they cannot prevail on their claims and a preliminary injunction should not issue. *See Allen v. School Comm. of Boston*, 396

Mass. 582, 585 (1986) (court's determination that plaintiffs lacked standing was "largely dispositive of the propriety of [a] preliminary injunction").²

In Count II, Plaintiffs seek to invalidate the Selectboard's waiver and release of the Town's c. 61 ROFR option and to require the Railroad Defendants to transfer land to the Town. However, the Court does not have general equity jurisdiction to "entertain a suit by individual taxpayers to restrain cities and towns from carrying out invalid contracts and performing other similar wrongful acts." *Hapgood v. Town of Southbridge*, 11 Mass.L.Rep. 632 (Mass. Super. Ct. June 1, 2000), quoting *Pratt v. City of Boston*, 396 Mass. 37, 42 (1985). To establish standing Plaintiffs must affirmatively demonstrate a statutory foundation to pursue their claim. *See id.* Plaintiffs assert three purported statutory bases for standing to bring Count II: (1) G.L. c. 40, §§ 3 & 53, which addresses municipal appropriations and conveyances of property; (2) G.L. c. 214, § 3(10), related to the enforcement of certain gifts of property; and (3) G.L. c. 231A, § 1, the general

² The issue of standing also bears on the question of irreparable harm. Plaintiffs argued that tree harvesting causes irreparable harm, but Plaintiffs themselves did not suffer this harm. Rather, Plaintiffs assert that they are "private attorneys general." However, there is no authority under which Plaintiffs may act on behalf of the public with respect to Count II. For this reason, this Court should not apply the "substantial possibility" standard identified in *Packaging Indus. Group*, 380 Mass. at 617 n. 12, for cases involving substantial irreparable harm. Even if the Court applied the "substantial possibility" standard, the Plaintiffs have failed to meet that burden either, for the same reasons they have failed to meet the likelihood of success on the merits standard.

declaratory judgment statute. Each statute affords only limited standing to ten-taxpayer plaintiffs under narrow circumstances that do not exist here.

Relief under G.L. c. 40 is sharply limited and is “measured entirely by the statute itself,” which authorizes only an injunction to prevent illegal expenditures. *See Amory v. Assessors of Boston*, 310 Mass. 199, 200 (1941). Further, “the statute normally does not authorize the undoing of completed transactions.” *Spear v. Boston*, 345 Mass. 744, 746 (1963) (collecting cases). Thus, while Plaintiffs may have standing under G.L. c. 40 to allege that the Town’s planned expenditures under the Settlement Agreement are unlawful, they do not have standing to compel the Selectboard to exercise a ROFR or to compel the Railroad Defendants to transfer land.

G.L. c. 214, § 3(10) confers ten-taxpayers standing to enforce “the purpose or purposes of any . . . conveyance which has been . . . made to and accepted by any . . . town . . .” *See Pratt*, 396 Mass. at 45. Neither the subject forestland nor the G.L. c. 61 ROFR was ever gifted or conveyed to, or by the Town; therefore, the statute does not apply. *See id.*; compare *Daly v. McCarthy*, 11 LCR 367 (Land Ct. Aug. 4, 2003), *affirmed* 63 Mass. App. Ct. 1103 (2005) (applying statute to enforcement of agricultural restriction because restriction was conveyed and gifted to town).

Finally, the declaratory judgment statute, G.L. c. 231A, § 1, does not afford Plaintiffs standing, because Plaintiffs purport for the Town, not themselves. Plaintiffs cannot claim standing simply as members of the general public, since one "zealous in the enforcement of law but without private interest" is not an aggrieved person. *Abdow v. Massachusetts Bay Transp. Authority*, 33 Mass. L. Rep. 126 (2015) (citations omitted). It is "settled that G.L. c. 231A does not provide an independent statutory basis for standing." *Enos v. Secretary of Env'tl. Affairs*, 432 Mass. 132, 135 (2000), citing *Pratt*, 396 Mass. at 42-43. In order to have standing Plaintiffs must allege that they have suffered a legally cognizable injury within the area of concern of the statute under which a purportedly wrongful action occurred. *See Massachusetts Ass'n of Indep. Ins. Agents & Brokers, Inc. v. Commissioner of Ins.*, 373 Mass. 290, 293 (1977). Since Plaintiffs have not alleged that they suffered a legally cognizable injury, they do not have standing under G.L. c. 231A.

By solely relying on and adopting Justice Meade's reasoning which was limited to Count I, the Court clearly failed to analyze Plaintiffs' standing under Count II. Because Plaintiffs do not have standing to pursue Count II, they did not establish a likelihood of success on Count II. Accordingly, the preliminary injunction should not have entered and should be dissolved.

D. COUNT II DOES NOT STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED BECAUSE THE CLAIM ALLEGED WAS RELEASED AND DISMISSED WITH PREJUDICE.

Assuming arguendo, Plaintiffs have standing with respect to Count II, they did not establish a likelihood of succeeding on this count because this claim was waived and released by the Selectboard in accordance with its discretionary authority and dismissed with prejudice by the Town. The claim cannot be revived by the Plaintiffs or anyone else.

Though Plaintiffs take issue with the Selectboard's decision to waive and release the Town's c. 61 ROFR, Chapter 61 is explicit that the decision to exercise an option to purchase must be made by a mayor or board of selectmen. G.L. c. 61, § 8. Similarly, "any waiver of that right can only be exercised by the mayor or board of selectmen." *Town of Brimfield v. Caron*, 18 LCR 44, 52, 2010 Mass. LCR LEXIS 14, *49 (Land Ct. Jan. 12, 2010). Whether to exercise a G.L. c. 61 right is subject to the Selectboard's absolute and sole discretion.

The Selectboard's authority to release the G.L. c. 61 claim was even greater because they were engaged in disputed litigation over the claim. The Selectboard is the exclusive entity responsible for prosecuting, defending and settling litigation. *See* RA/310-312 (Town of Hopedale Bylaw, § 32-1) ("The Selectmen shall be agents of the Town to institute, prosecute and defend any and all claims, actions and proceedings to which the Town is a party or in which the interests of the Town

are or may be involved.”); *see further, Northgate Constr. Corp. v. Fall River*, 12 Mass. App. Ct. 859, 860-861 (1981)(municipality has the “inherent implied power to effect a settlement by compromise in good faith of genuine claims against it... [and] need not insist on litigating them...”).

Finally, Massachusetts law favors the enforcement of releases. *See Sharon v. City of Newton*, 437 Mass. 99, 105 (2002). The Settlement Agreement includes mutual releases of all claims that could have been brought in the Land Court action. *Id.* The Town’s release included specific language including “any claims with respect to ownership of real property located at 364 West Street, Hopedale, MA, including any claim asserting a [ROFR] under Chapter 61 of the Massachusetts General Laws.” *Id.* There is no question that Count II is a “claim with respect to ownership of real property located at 364 West Main Street” and a “claim asserting a [ROFR] under Chapter 61 of the Massachusetts General Laws.” Therefore, Count II is squarely within the scope of claims already released by the Town.

Had the Court properly applied the preliminary injunction standard to Count II, it would have been required to find Plaintiffs had failed to establish a likelihood of success on this count because the decision exercise, waive and/or release a c. 61 ROFR is a discretionary act reserved solely to the Selectboard.

CONCLUSION

For the reasons set forth herein, the Court committed an error of law by failing to analyze whether Plaintiffs had established a likelihood of success on the merits of Count II against the Railroad Defendants. Because Plaintiffs do not have standing and because the Selectboard acted within its executive authority when it exercised its discretion to waive and release the c. 61 ROFR, Plaintiffs failed to establish a likelihood of success on Count II. The Single Justice should therefore dissolve the injunction issued by the Superior Court on Count II.

GRAFTON & UPTON RAILROAD
COMPANY, JON DELLI PRISCOLI,
AND MICHAEL MILANOSKI, as
Trustees of the ONE HUNDRED
FORTY REALTY TRUST,

By Their Attorneys,

/s/ Donald C. Keavany, Jr.

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CERTIFICATE OF SERVICE

I hereby certify that this document filed through the Appeals Court's E-File system on September 28, 2021 will be sent by separate email and first-class mail to:

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I further certify this 28th day of September, 2021, that I have served a copy of the foregoing document by causing it to be delivered by First Class mail to:

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

Donald C. Keavany, Jr.

**CERTIFICATE OF COMPLIANCE WITH
MASS. R. A. P. 20 and the Appeals Court Rule 20.0(c) Concerning Petitions
to the Single Justice**

I, Andrew P. DiCenzo, hereby certify that the foregoing document complies with Mass. R. A. P. 20(a)(4)(A)-(C) and the Appeals Court Rule 20.0(c) Concerning Petitions to the Single Justice. Compliance with Mass. R. A. P. 20 was ascertained by using Times New Roman, 14-point font in Microsoft Word on Office 365. The document has 1-inch margins on each side and contains 3,489 non-excluded words.

Andrew P. DiCenzo _____

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss.

SUPERIOR COURT
CIVIL ACTION NO. 21CV00238

ELIZABETH REILLY and others,¹

Plaintiff,

v.

TOWN OF HOPEDALE and others,²

Defendants.

MEMORANDUM AND ORDER ON MOTION FOR PRELIMINARY INJUNCTION

Before the court is the plaintiffs' motion to "preserve the status quo" and prevent the defendants, Grafton & Upton Railway ("Railway") and related persons and entities, from removing trees and otherwise interfering with property designated as protected forestland. Consider the motion as one for injunctive relief, the court **ALLOWS** the motion.

BACKGROUND³

The court briefly summarizes the factual and procedural background of this case. Approximately 30 years ago, the assessor of the Town of Hopedale ("Hopedale" or the "Town") approved the application of the owner of 130.18 acres of woodlands to designate the property as forestland (the "Forestland") under G. L. c. 61, §2 ("Chapter 61"). In return for preferential tax treatment under Chapter 61, the Forestland could not be sold for residential, industrial, or

¹ Carol J. Hall, Donald D. Hall, Hilary Smith, David Smith, Megan Fleming, Stephanie A. McCallum, Jason A. Beard, Shannon W. Fleming, and Janice Doyle.

² Louis J. Arcudi, III, Brian Keyes, Grafton & Upton Railroad Company, Jon Delli Priscoli, Michael Milanoski, and One Hundred Realty Trust.

³ The facts are drawn from the verified complaint and exhibits as well as affidavits submitted in connection with the motion to preserve the status quo.

commercial purposes unless the Town received notice of the proposed sale and an opportunity to exercise its right of first refusal. G. L. c. 61, §8.

On July 9, 2020, Charles Morneau, as Trustee for One Hundred-Forty Realty Trust (the “Trust”), the owner of the Forestland, notified Hopedale of the Trust’s intent to sell to the Railway 155.24 acres of land, which included the Forestland as well as 25.06 acres of wetlands (the “Wetlands”). On August 19, 2020, Hopedale asked the Trust to clarify its notice to specify the terms applicable specifically to the Forestland.

The Trust’s response reflected a blurring of the lines between the Trust and the Railway. On October 7, 2021, that the law firm that now represents the Railway, notified the town on behalf of its client (which the firm did not identify) that rather it was withdrawing its Chapter 61 notice. Hopedale responded the following day,⁴ stating that the Trust’s purported withdrawal was of no effect, and that Hopedale would proceed to consider whether to exercise its right of first refusal. On October 15, 2020, the Railway notified the town that it had purchased “all of the beneficial interest” of the Trust in the Forestland. Around the same time, Railway officials replaced Morneau as Trustees of the Trust.

On October 21, 2020, Hopedale notified the Railway and the Trust that it was moving forward with its option to buy the Forestland. On October 24, 202, residents at the Hopedale town meeting voted to appropriate money \$1,175,000 to acquire the Forestland under Chapter 61 and to fund the taking of the Wetlands by eminent domain. Six days later, the Board of Selectmen voted to buy the Forestland and take the Wetlands by eminent domain. On November 2, 2020, Hopedale recorded in the Worcester South District Registry of Deeds notice of its decision to exercise its right of First Refusal in the Forestland and eminent domain rights over the Wetlands.

⁴ Hopedale’s response was addressed to the Trust.

In the meantime, the Railway had begun to clear the Forestland. Hopedale filed a lawsuit in the Land Court seeking to stop the clearing and effectuate its acquisition of the Forestland and Wetlands. The Land Court litigation resulted in a Settlement Agreement executed on February 9, 2021, under which Hopedale would buy approximately 40 acres of the Forestland for \$587,500. The plaintiffs filed the instant lawsuit on March 3, 2021, along with a motion for a preliminary injunction seeking to enjoin the Town from buying a portion of the Forestland.

On March 11, 2021, the court (Frison, J.) denied the motion for a preliminary injunction. The plaintiffs appealed and a single justice of the Appeals Court on April 8, 2021, enjoined Hopedale from making any expenditure, issuing any bonds, or transferring any property pursuant to the Settlement Agreement.

Thereafter, the parties filed cross motions for judgment on the pleadings which were heard by the court on September 9, 2021. On the day of the hearing, the plaintiffs filed an “Emergency Motion to Preserve the Status Quo.” The motion and supporting affidavits stated that the Railway had resumed cutting trees on the Forestland. Following a September 9, 2021, hearing on the motions for judgment on the pleading and the motion for injunctive relief, the court entered a Temporary Restraining Order preventing any further alteration or destruction of the Forestland pending further order of the court. The court also invited the parties to supplement their filings relating to the requested injunction, which the parties did on September 13, 2021.

DISCUSSION

A court addressing a request for injunctive relief must balance the risk of irreparable harm to the parties in light of each party's likelihood of success on the merits. See *Planned Parenthood League of Massachusetts, Inc. v. Operation Rescue*, 406 Mass. 701, 710 (1990). See also *Packaging Industries Group, Inc. v. Cheney*, 380 Mass. 606, 616–17 (1980). “Since the

goal is to minimize the risk of irreparable harm, if the moving party can demonstrate both that the requested relief is necessary to prevent irreparable harm to it and that granting the injunction poses no substantial risk of such harm to the opposing party, a substantial possibility of success on the merits warrants issuing the injunction.” *Packaging Industries*, 380 Mass. at 617, n.12. In addition, given the nature of this case, the court must also consider “the risk of harm to the public interest.” *Brookline v. Goldstein*, 388 Mass. 443, 447, 447 N.E.2d 641 (1983).

Before the court turns to applying that standard here, it will address the impact of the appeals court injunction on the current request to “preserve the status quo.” The Railway argues that the injunction entered by the appeals court does not restrain its actions on the Forestland because the order only prevents the town from spending money to acquire a just portion of the Forestland. In the court’s view, the Railway reads the injunction too narrowly. The purpose of the injunction was to temporarily prevent the town from releasing the Chapter 61 limitations on a large portion of the Section 61 Forestland owned by the Trust. By clearing the Forestland, the Railway, in essence, is treating the Forestland as though it were released from Chapter 61 constraints, a result the appeals court injunction sought to prevent.

To the extent the appeals court order is not broad enough to constrain the Railway’s actions, this court believes it appropriate to extend its reach to the Trust and the Railway.⁵ If the plaintiffs are successful in this lawsuit, the Forestland would remain in its natural state. The Railway’s continued clearing of the Forestland would make that result impossible.

Finally, the court’s own analysis of the appropriateness of injunctive relief leads it to the same conclusion. The court agrees with the Appeals Court that the plaintiffs have at least a reasonable likelihood of success on the merits and adopts its analysis here. See *Reilly v. Hopedale*, Appeals Court No. 2021-J00111 (April 8, 2021). That the plaintiffs would suffer

⁵ Although the Trust still appears to be the record owner, the Railway is treating the property as its own.

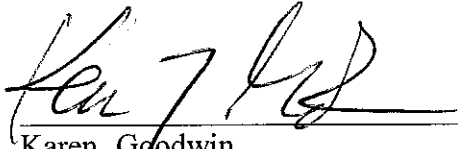
irreparable harm requires little discussion. Once trees are removed, they are gone for the foreseeable future. The Railway's claimed – delays in maintaining a construction schedule – pales in comparison. The question of harm to the public interest depends to a large degree on which side of the litigation is correct. In any event, the court see no obvious risk of harm to the public interest occasioned by issuing the preliminary injunction.

ORDER

For the above reasons, it is **ORDERED THAT**:

1. The plaintiff's Motion for a Preliminary Injunction is **ALLOWED**.
2. Grafton & Upton Railroad Company, Jon Delli Priscoli, Michael Milanoski, and One Hundred Realty Trust are **TEMPORARILY ENJOINED** from any further alteration or destruction of the 130.18 acres of Forestland that is the subject of this lawsuit pending further order of the court.

Dated: September 24, 2021



Karen Goodwin
Associate Justice, Superior Court

Zimbra

jennifer.witaszek@jud.state.ma.us

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

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

And another..... thank you

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

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

FILED

APR 08 2021

ATTEST:  CLERK

- COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT CLERK'S OFFICE

April 8, 2021

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

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

NOTICE OF DOCKET ENTRY

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

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

28

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Footnotes:

1. Carol J. Hall, Hillary Smith, David Smith, Megan Fleming, Stephanie A McCallum, Jason A. Beard, Amy Beard, Shannon W. Fleming, and Janice Doyle.

2. Louis J. Arcudi, III, Brian R. Keyes, Grafton & Upton Railroad Company, John Delli Prisculi, Michael R. Milanoski, and One Hundred Forty Realty Trust.

3. The land is owned by the trust defendant. However, the trust is controlled by the railroad. For convenience, I refer only to the railroad but include the trust where appropriate.

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

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

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

Very truly yours,


The Clerk's Office

Dated: April 8, 2021

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

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

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Diana Schindler, Town Administrator
78 Hopedale Street
Hopedale, MA 01747

September 9, 2021

Dear Diana,

Congratulations! On behalf of Governor Baker and Lieutenant Governor Polito, I am excited to notify you that the Town of Hopedale has been designated by the Executive Office of Energy and Environmental Affairs (EEA) as a Municipal Vulnerability Preparedness (MVP) Community for its completion of the Community Resilience Building planning process. This MVP Community designation indicates the Town's commitment to preparing for climate change. As an MVP Community, the Town of Hopedale is eligible to apply for MVP Action Grants as administered by EEA and may receive increased standing in future state funding opportunities, allowing you to pursue implementation of priority actions.

In order to maintain MVP designation, the Town of Hopedale must submit yearly progress reports to EEA by June 30. In addition, progress reports must also be submitted with MVP Action Grant applications. EEA will provide a progress report template to summarize steps taken to build on the MVP planning process. Such steps may include:

- Applying for grants, such as the MVP Action Grant, that support implementation of resiliency measures;
- Reconvening your Core Team to make revisions/updates to the MVP report/plan, or discuss progress related to resiliency and MVP;
- Using the outcomes of your workshop to inform other planning efforts or updating existing documents (e.g., updating existing local plans); and/or
- Taking additional steps towards implementing your priority actions.

I want to commend your community's dedication to climate change resiliency and I look forward to watching as the Town of Hopedale continues its efforts to plan and implement priority climate adaptation strategies. Going forward, should you have any questions, please contact Kara Runsten, MVP Program Manager (kara.runsten@mass.gov).

Again, congratulations, and best wishes.

A handwritten signature in cursive script that reads "K. Theoharides".

Secretary Kathleen Theoharides