

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

GRAFTON & UPTON RAILROAD )  
COMPANY, JON DELLI PRISCOLI and )  
MICHAEL R. MILANOSKI, as Trustees )  
of ONE HUNDRED FORTY REALTY TRUST, )  
Plaintiffs )

vs. )

Case No. 4:22-cv-40080-ADB

TOWN OF HOPEDALE, THE HOPEDALE )  
SELECT BOARD, by and through its members, )  
GLENDA HAZARD, BERNARD STOCK, )  
and BRIAN KEYES and THE HOPEDALE )  
CONSERVATION COMMISSION by and )  
through its members, BECCA SOLOMON, )  
MARCIA MATTHEWS and DAVID )  
GUGLIELMI )  
Defendants )

**GRAFTON & UPTON RAILROAD COMPANY’S MOTION FOR CLARIFICATION**

Plaintiff, Grafton & Upton Railroad Company (“GURR”) hereby moves for clarification of Order(s) issued by this Court to confirm that it may conduct water exploration work on its land at 364 West Street, Hopedale, MA. As grounds for its motion, GURR states the following:

1. In October 2020, GURR acquired ownership of a 155-acre parcel of land located at 364 West Street. Verified Complaint (“VC”) ¶¶ 24-28. GURR now owns approximately 198 acres at 364 West Street. VC ¶29.

2. In November 2020, the Town of Hopedale, through its Selectboard, filed suit in the Massachusetts Land Court claiming it possessed it had a valid and ripened right of first refusal option to purchase 130.18 acres of the 364 West Street parcel and sought declaratory relief that it possessed such an option and further requested specific performance, ordering that the 130.18 acres be transferred by GURR to the Town. VC ¶37.

3. In January 2021, the Town and GURR settled the Town's Land Court litigation and the parties filed a Stipulation of Dismissal with Prejudice on February 10, 2021. VC ¶¶40-41.

4. Approximately sixteen (16) months later, a new Selectboard was elected and on June 21, 2022 the new Selectboard discussed its intentions to take approximately 130 acres of land owned by GURR at 364 West Street by eminent domain. VC ¶¶59-65.

5. At its June 21 meeting, the Board announced the scheduling of a Special Town Meeting ("STM") for July 11 to vote to authorize the taking of approximately 130 acres of land from GURR and to appropriate funds for the taking. VC ¶74.

6. The Board continued to schedule the STM for July 11 even though it did not possess a completed appraisal of the land it was intending to take and had not described with particularity, the land it was intending to take. VC ¶¶68-69.

7. On July 11, voters at the STM approved a motion to authorize the Selectboard to take approximately 130 acres+- of 364 West Street by eminent domain. VC ¶¶69-70.

8. In the afternoon of Thursday, July 14, the Board scheduled a meeting for the following Tuesday, July 19 at which it intended to vote to take approximately 130 acres+- of the 198+- acres at 364 West Street and directed its counsel to record a notice of taking, which can be done immediately after the vote. VC ¶71.

9. Takings pursuant to M.G.L. c. 79 transfer title immediately upon recording.

10. On July 18, GURR filed an Emergency Motion for Temporary Restraining Order/Preliminary Injunction seeking to enjoin the Town from recording an Order of Taking, should the Selectboard vote to take land from GURR. ECF#2-#3.

11. On July 18, this Court (Saylor, J.) entered a temporary restraining order enjoining the Town from recording any order of taking, should such an order be favorably voted on by the Selectboard. ECF #18.

12. On July 25, the parties submitted a proposed Amended Temporary Restraining Order to extend the TRO entered by Chief Justice Saylor “until such time as the Court issues its decision on plaintiffs’ anticipated motion for preliminary injunction.” ECF #22.

13. On July 26, this Court (Burroughs, J.) approved the proposed Amended Temporary Restraining Order. ECF #23.

14. On August 1, the Selectboard voted to take approximately 130 acres of GURR’s land at 364 West Street.

15. On August 10, this Court (Burroughs, J.), held a hearing on GURR’s Motion for Preliminary Injunction wherein GURR sought to continue the injunctive relief granted by the temporary restraining order entered on July 18, namely to continue to enjoin the Selectboard from recording the Order of Taking it voted favorably on August 1.

16. The Town did not move for any injunctive relief against the GURR, and in fact, has not asserted any claims against GURR in this action.

17. The Court’s docket entry following the August 10 hearing (ECF #48) reflects that “Court would like status quo to be maintained.” This entry was consistent with the Court’s request during the hearing that the parties submit proposed orders with respect to continuing the restraining/order injunction.

18. On August 10, counsel for GURR and counsel for the Town defendants submitted proposed Orders for the Court’s consideration. ECF #49 and ECF #50.

19. Both proposed Orders included language enjoining the Town from recording an Order of Taking by eminent domain of any portion of GURR's property at 364 West Street. Both proposed Orders also included language enjoining GURR from engaging in further construction and development on the 130.18 acres at 364 West Street. The Town's proposed Order specifically requested that GURR be enjoined from engaging "in any further construction or development on the 130.18 acres that are the subject of this lawsuit, including but not limited to tree clearing, grading, laying tracks, creating impervious cover, constructing any buildings or facilities, or any other action that would alter the property as it currently exists." ECF #50.

20. To date, the Court has not endorsed either of the proposed Orders submitted by the parties on August 10 and has not decided GURR's Motion for Preliminary Injunction.<sup>1</sup>

21. GURR has maintained the status quo and has not engaged in any further development work since the August 10 hearing, although it has maintained the Stormwater Pollution Prevention Plan ("SWPPP") which was approved and required by the United States Environmental Protection Agency ("EPA"). GURR has hosted EPA representatives on site and has had meetings with EPA to ensure compliance with the SWPPP. See Third Affidavit of Michael Milanoski, ¶4 filed herewith.

22. To date, the Town has never moved for injunctive relief against GURR, and thus has never established entitlement to injunctive relief against GURR.

23. GURR currently has 359 railcars on its railroad. Milanoski Aff., ¶5. GURR's railcar capacity is currently over 90% and expects an additional 90+ railcars over the next week, and with those additional railcars GURR's rail capacity will approach 100%. Id. GURR

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<sup>1</sup> Additionally, the Town Defendants filed a Motion to Dismiss GURR's Verified Complaint (ECF#51) on August 12, which was opposed by GURR (ECF# 53).

requires additional track to handle the railcar volume and future growth, which is planned for its 364 West Street property. Id.

24. Additionally, winter and colder temperatures are fast-approaching. Before consistent freezing temperatures arrive, GURR seeks to identify a new water source on the subject land, in conjunction with the Massachusetts Department of Environmental Protection (MassDEP). Id., ¶6.

25. GURR's proposed new water source exploration work is consistent with the Town's alleged public purpose for the eminent domain taking and with the Town's representations to this Court (and other courts) that the Town views the subject land as a probable future water source. See, e.g., Affidavit of Diana Schindler, ECF #32-1, ¶3 ("Special Town Meeting authorized the Select Board to take the Site for the purpose of conservation and drinking water resources"); Affidavit of Edward J. Burt, ECF #32-3, ¶4 ("[T]he Site contains one of the Town's only viable areas for future water sources"). GURR's proposed water source exploration work is further consistent with the Settlement Agreement entered into between the Town and GURR in February 2021. Milanoski Aff., ¶7.

26. GURR's proposed new water source exploration work would include the installation of a bedrock well to conduct a 48-hour pump test to collect water quality samples for submission to MassDEP. This effort will include the hiring of a licensed well driller to install bedrock water supply well, and will be overseen by a licensed hydrogeologist. Water quality testing will meet all MassDEP requirements. Id., ¶8.

27. The water testing will not cause any permanent alteration to the subject property, but for the installed well, as after the water test concludes, the areas of disturbance will be returned to their condition prior to commencement of the work. Id., ¶9.

28. GURR seeks clarification from the Court that it may engage in water exploration at the subject property, while it awaits the Court's decision on its Motion for Preliminary Injunction, filed on July 28, 2022. (ECF #26 and #27).

WHEREFORE, Grafton & Upton Railroad Company, seeks clarification from the Court that it may conduct the water exploration work described in this motion.

**REQUEST FOR ORAL ARGUMENT**

Grafton & Upton Railroad Company requests a hearing on this Motion at the Court's earliest convenience.

**CERTIFICATION PURSUANT TO LOCAL RULE 7.1(a)(1)**

I, Donald C. Keavany, Jr., counsel for Grafton & Upton Railroad Company, hereby certify that I conferred with counsel for the Defendants pursuant to Local Rule 7.1(a)(1) on November 3, 2022 and have attempted in good faith to resolve or narrow the issues subject to this Motion. Counsel for the Defendants stated their opposition to this Motion.

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 ECF system will be sent electronically to counsel of record for all parties on this 9<sup>th</sup> day of November 2022.

/s/ Andrew P. DiCenzo