

COMMONWEALTH OF MASSACHUSETTS  
APPEALS COURT

TOWN OF HOPEDALE,

Plaintiff,

v.

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

Defendants.

No. 2022-J-0146  
Lower Ct. No. 20MISC000467

**AFFIDAVIT OF DIANA SCHINDLER**

Now comes Diana Schindler, who on oath deposes and says as follows:

1. I am the Town Administrator for the Town of Hopedale, and I have personal knowledge of the facts set forth in this affidavit.
2. I have served as the Town Administrator for Hopedale since April 2020.
3. I have been aware of and involved with the issues related to the Grafton & Upton Railroad Company's ("GURR") interest in 364 West Street since at least their July 13, 2020, presentation regarding their plan to develop this property.

4. I have worked with and facilitated the Select Board's process with respect to their role under G.L. c. 61 regarding the sale or conversion of the portions of 364 West Street that was classified as forest land under the statute.
5. I have also worked with the Board to review the decisions of the Superior Court, Land Court, and Appeals Court with respect to this litigation, including the Town's efforts to exercise its right of first refusal under G.L. c. 61, § 8, the Special Town Meeting in October 2020, the negotiations over the February 2021 Settlement Agreement, and the recent Special Town Meeting in March 2022 that was scheduled as a result of the decisions in the Superior Court and Land Court.
6. On March 26, 2022, the Town held a Special Town Meeting vote on warrant articles authorizing the Parcel A acquisition under the Settlement Agreement and the appropriation of funds for the acquisition. The Town Meeting voted down the warrant articles and they did not pass.
7. I have reviewed the Affidavits submitted in this litigation by Mr. Michael Milanoski of the GURR asserting damages that would be caused by the imposition of an injunction.
8. I disagree with Mr. Milanoski's assertion that GURR experienced any damage from the failed attempt to establish a public-private partnership in July 2020. Affidavit of Michael R. Milanoski, February 21, 2022 (Milanoski

Feb. Aff.), ¶ 6. The Town was not obligated to enter into any such partnership and no damages could be attributed to a mere proposal.

9. To the extent GURR is able to articulate any legally-supportable damages for its cost of maintaining the status quo at 364 West Street, the Town likely has sufficient financial resources to satisfy actual reasonable damages GURR might incur as a result of the delays imposed by the appellate process.
10. Assuming for the sake of this affidavit that GURR could establish that it was entitled to damages from the imposition of an injunction pending appeal, the Town of Hopedale has a very low debt service. Town Meeting could vote, by two-thirds, to use borrowing to cover any liability – to the extent any liability could be established.
11. Similarly, the Town would have access, by vote, to its other available funds. As it has previously, the Town could potentially accept gifts or donations by concerned residents that could offset GURR's actual damages from an injunction during a meritorious appeal.
12. Accordingly, I believe that Town would have sufficient funds, or could raise sufficient funds, in the unlikely event the Town is ordered to pay for any damages GURR would face due to an injunction imposed by the Appeals Court after notice and briefing by the parties.

Signed under the pains and penalties of perjury this 7<sup>th</sup> day of April 2022.

A handwritten signature in blue ink that reads "Diana Schindler". The signature is written in a cursive style with a large initial 'D'.

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Diana Schindler  
Town Administrator, Town of Hopedale

## CERTIFICATE OF SERVICE

I certify that on April 7, 2022, I served this Affidavit of Diana Schindler on the above-captioned Defendants by emailing a copy thereof to their attorney, Donald C. Keavany, Jr., Esq., of Christopher Hays, Wojcik & Mavricos, LLP, 370 Main Street, Suite 970, Worcester, Massachusetts.

Signed under the penalties of perjury.



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Peter F. Durning