

COMMONWEALTH OF MASSACHUSETTS
LAND COURT DEPARTMENT
OF THE TRIAL COURT

WORCESTER, SS

CIVIL ACTION NO.20MISC 00467 (DRR)

TOWN OF HOPEDALE)

Plaintiff)

vs.)

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

Defendants)

AFFIDAVIT OF DONALD C. KEAVANY, JR., ESQ.

Now comes Donald C. Keavany, Jr., who on oath deposes and says as follows:

1. I am an attorney licensed to practice law in the Commonwealth and I represent the defendants, Grafton & Upton Railroad Company (“G&U”), and Jon Delli Priscoli and Michael Milanoski, as Trustees of One Hundred Forty Realty Trust (“Trust”) (collectively, “G&U Parties”) in this action. I have personal knowledge of the facts set forth in this Affidavit.
2. Attached hereto as Exhibit 1 is a true and accurate copy of the Amended Complaint (without exhibits) filed by the Town of Hopedale (“Town”) in this Action.
3. Attached hereto as Exhibit 2 is a true and accurate copy of the Docket in this Action.
4. Attached hereto as Exhibit 3 is a true and accurate copy of the December 1, 2020 Stipulation filed by the Town and the G&U Parties in this Action.

5. Attached hereto as Exhibit 4 is a true and accurate copy of the December 14, 2020 ADA Referral Form filed in this Action

6. Attached hereto as Exhibit 5 is a highlighted excerpt of a true and accurate copy of the Agenda for the December 21, 2020 Town's Selectboard public meeting.

7. Attached hereto as Exhibit 6 is a highlighted excerpt of a true and accurate copy of the Minutes for the December 21, 2020 Town's Selectboard public meeting.

8. Attached hereto as Exhibit 7 is a highlighted excerpt of a true and accurate copy of the Agenda for the January 4, 2021 Town's Selectboard public meeting.

9. Attached hereto as Exhibit 8 is a highlighted excerpt of a true and accurate copy of the Minutes for the January 4, 2021 Town's Selectboard public meeting.

10. Attached hereto as Exhibit 9 is a highlighted excerpt of a true and accurate copy of the Agenda for the January 8, 2021 Town's Selectboard public meeting.

11. Attached hereto as Exhibit 10 is a highlighted excerpt of a true and accurate copy of the Minutes for the January 8, 2021 Town's Selectboard public meeting.

12. Attached hereto as Exhibit 11 is a highlighted excerpt of a true and accurate copy of the Agenda for the January 12, 2021 Town's Selectboard public meeting.

13. Attached hereto as Exhibit 12 is a highlighted excerpt of a true and accurate copy of the Minutes for the January 12, 2021 Town's Selectboard public meeting.

14. Attached hereto as Exhibit 13 is a highlighted excerpt of a true and accurate copy of the Agenda for the January 21, 2021 Town's Selectboard public meeting.

15. Attached hereto as Exhibit 14 is a highlighted excerpt of a true and accurate copy of the Minutes for the January 21, 2021 Town's Selectboard public meeting.

16. Attached hereto as Exhibit 15 is a highlighted excerpt of a true and accurate copy of the Agenda for the January 25, 2021 Town's Selectboard public meeting.

17. Attached hereto as Exhibit 16 is a highlighted excerpt of a true and accurate copy of the Minutes for the January 25, 2021 Town's Selectboard public meeting.

18. Attached hereto as Exhibit 17 is a highlighted excerpt of a true and accurate copy of the Agenda for the February 8, 2021 Town's Selectboard public meeting.

19. Attached hereto as Exhibit 18 is a highlighted excerpt of a true and accurate copy of the Minutes for the February 8, 2021 Town's Selectboard public meeting.

20. Attached hereto as Exhibit 19 is a true and accurate copy of the February 7, 2021 9-page single spaced letter from counsel for the Proposed Interveners to the Town's Selectboard.

21. Attached hereto as Exhibit 20 is a true and accurate copy of the Stipulation of Dismissal With Prejudice executed and filed on February 10, 2021 in this Action.

22. Attached hereto as Exhibit 21 is a true and accurate copy of the March 3, 2021 Verified Complaint (without exhibits) filed by the Proposed Interveners in Superior Court in the matter of Elizabeth Reilly, et al v. Town of Hopedale et al, 2185CV00238 ("Superior Court Action").

23. Attached hereto as Exhibit 22 is a true and accurate copy of the Judgment that entered in the Superior Court Action on November 10, 2021.

24. Attached hereto as Exhibit 23 is a true and accurate copy of the Superior Court's December 14, 2021 Clarification that entered in the Superior Court Action, which has been highlighted by counsel for the G&U Parties.

25. Attached hereto as Exhibit 24 is a highlighted excerpt of a true and accurate copy of the Transcript of the Hearing on the Town of Hopedale's Emergency Motion for Injunction

Pending Appeal before the Superior Court (Goodwin, J.) on February 9, 2022 in the Superior Court Action, which has been highlighted by counsel for the G&U Parties.

26. Attached hereto as Exhibit 25 is a highlighted excerpt of a true and accurate copy of the Transcript of the Hearing on the Ten Taxpayer's Emergency Motion for Injunction Pending Appeal before the Superior Court (Goodwin, J.) on May 3, 2022 in the Superior Court Action.

27. Attached hereto as Exhibit 26 is a true and accurate copy of the May 6, 2022 Memorandum of Decision and Order of the Superior Court (Goodwin, J.) denying Ten Taxpayer's Emergency Motion for Injunction Pending Appeal 2022 in Superior Court Action, which has been highlighted by counsel for the G&U Parties.

28. Attached hereto as Exhibit 27 is a true and accurate copy of the *Release of Classified Forest-Agricultural or Horticultural Land Tax Lien*, dated June 14, 2022, executed by the Town of Hopedale Board of Assessors "releasing all rights upon the real property" located at 364 West Street, which was recorded at the Worcester County Registry of Deeds at Book 67858 and Page 196 on July 5, 2022.

29. Attached hereto as Exhibit 28 is a true and accurate copy of the December 15, 2022 email thread between Hopedale Selectboard Chairwoman, Glenda Hazard and lead ten taxpayer proposed intervener, Elizabeth Reilly wherein Chairwoman Hazard forwards the Anderson Kreiger, LLP invoice for legal services rendered to the Town for payment by Ms. Reilly or another third-party that Ms. Reilly is in communication.

30. Attached hereto as Exhibit 29 is a true and accurate copy of the Memorandum of Defendants Town of Hopedale and Hopedale Board of Selectmen in Response to Plaintiffs'

Motion for Judgment on the Pleadings and Cross-Motion for Judgment on the Pleadings, an excerpt of which has been highlighted on page 14 by counsel for the G&U Parties.

31. Attached hereto as Exhibit 30 is a true and accurate copy of the April 19, 2022 Decision of the Single Justice of the Appeals Court in the matter of Town of Hopedale v. Grafton & Upton Railroad Company et al, 2022-J-0146 (Desmond, J.).

Signed under the penalties of perjury this 31st day of August 2023.

/s/ Donald C. Keavany, Jr.

CERTIFICATE OF SERVICE

I hereby certify that this document filed by email on August 31, 2023 will be sent by separate email to.

/s/ Donald C. Keavany, Jr.

EXHIBIT 1

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

LAND COURT DEPARTMENT
OF THE TRIAL COURT
CIVIL ACTION NO. 20 MISC 000467

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.

AMENDED VERIFIED COMPLAINT

The Town of Hopedale, by and through its Board of Selectmen, brings this civil action against the parties who now own the controlling interest to a parcel of land in Hopedale which is classified as forest land for tax purposes under Chapter 61 of the General Laws.

On July 9, 2020, the One Hundred Forty Realty Trust (the "Trust"), under control of a prior trustee, sent the Town notice of its intent to sell the Chapter 61 land with a copy of the purchase and sale agreement with a trust affiliated with the Grafton & Upton Railroad Company ("GURR"). Pursuant to M.G.L. c. 61, § 8, Hopedale has a first refusal option to meet any offer to purchase classified forest land and 120 days to exercise this option. Within this statutory time period, the prior trustee assigned 100% of the beneficial interest of the Trust to GURR, so that GURR has obtained the controlling interest in the Chapter 61 land. Even though the Trust still holds legal title to the Chapter 61 land and the Town still holds an option to purchase it, GURR has begun to convert the use of the land by clearing the forest in preparation for development.

After a duly noticed public hearing, the Hopedale Board of Selectmen voted to exercise the first refusal option on October 30, 2020.

Therefore, Hopedale now seeks equitable relief from this Court, including: (i) a declaration that the Trust and GURR are prohibited from taking any action or conducting any activities on or concerning the Chapter 61 land which would result in any alienation of it or any conversion of its current use as forest land until such time as the Town no longer holds the option to purchase; (ii) a temporary restraining order and/or a preliminary injunction preventing the Trust and/or GURR and each of their agents and representatives from alienating or converting the use of the Chapter 61 land at any time before the expiration of the statutory first refusal option period set forth in M.G.L. c. 61, § 8, and as extended by Section 9 of Chapter 53 of the Acts of 2020; (iii) entry of a memorandum *lis pendens* covering the Chapter 61 land; and (iv) entry of an order for specific performance directing the Trust to convey the Chapter 61 land to the Town.

PARTIES

1. Plaintiff Town of Hopedale (“Hopedale” or the “Town”) is a Massachusetts municipality, here acting through its duly-elected Board of Selectmen, with a principal address of 78 Hopedale Street in Hopedale, Massachusetts.

2. Defendants Jon Delli Priscoli and Michael R. Milanoski are Trustees of the One Hundred Forty Realty Trust (the “Trust”), which is a nominee trust established under a declaration of trust dated September 16, 1981, and recorded in the Worcester Registry of Deeds (the “Registry”) in Book 7322, Page 177. The trustees have a principal address of 7 Eda Avenue in Carver, Massachusetts. This action is brought against Mr. Delli Priscoli and Mr. Milanoski in their capacities as trustees only.

3. Defendant Grafton & Upton Railroad Company (“GURR”) is a Massachusetts corporation with a principal place of business at 42 Westborough Road in North Grafton, Massachusetts. GURR owns 100% of the beneficial interest of the Trust pursuant to an Assignment of Beneficial Interest dated October 12, 2020, and recorded in the Registry in Book 63493, Page 39.

JURISDICTION

4. This court has jurisdiction over the parties and this action pursuant to M.G.L. c. 184, § 1(k), because this action involves matters cognizable under the general principles of equity jurisprudence where a right, title, or interest in land is involved, including but not limited to specific performance of a land contract.

FACTUAL BACKGROUND

5. On or around June 27, 2020, the Trust (under the control of a prior trustee and prior owner of the beneficial interest, both of whom are unaffiliated with the defendants named herein) entered into a purchase and sale agreement with Jon Mark Delli Priscoli, Trustee of the New Hopping Brook Realty Trust, for two parcels of land located in Hopedale, Massachusetts, known as 363 West Street and 364 West Street for a purchase price of \$1,175,000.00 (the “P&S Agreement”). A true and accurate copy of the P&S Agreement is included in **Exhibit A** as described below.

6. At the time of execution of the P&S Agreement, the Trust owned both parcels.

7. The parcel located at 364 West Street consisted of 155.24 total acres of generally undeveloped land, 130.18 acres of which was (and continues to be) valued, assessed, and taxed as classified forest land under M.G.L. c. 61 (the “Chapter 61 Land”).

8. A portion of 364 West Street has been under Chapter 61 classification as forest land since 1992.

9. The Hopedale Board of Assessors approved the most recent re-certification of the Chapter 61 classification on or around September 3, 2014, and the current Chapter 61 tax lien is recorded in the Registry in Book 52875, Page 355.

10. The 364 West Street parcel was and is generally undeveloped except for a single railroad track and a gas pipeline easement that run through the managed forested land. There are no buildings or other structures located on the parcel.

11. According to a report prepared for the Town by Environmental Partners Group, Inc. (“EPG”), the 364 West Street parcel is located hydraulically-upgradient of all of Hopedale’s public water supply sources and provides an important buffer for protection of the Town’s public water supply wells. A copy of the EPG’s report is attached as **Exhibit B**.

12. In addition, EPG noted 364 West Street is the only optimal location for siting a new public water supply source in the Town, and ownership of the Chapter 61 Land would ensure that future land uses on the parcel are consistent with water supply protection and would not adversely impact groundwater quality.

13. The Chapter 61 Land is also located adjacent to, and contiguous with, the Hopedale Parklands, a public parkland first designated in 1899 and with trails and landscape features designed by the American landscape architect Warren H. Manning. Ownership of the Chapter 61 Land would accentuate this existing conservation land and open space and provide additional recreational opportunities for the residents of Hopedale in proximity to the Hopedale Parklands.

14. Upon information and belief, GURR owns and operates on the railroad track that runs through the 364 West Street parcel. GURR is a short line railroad that runs for 16.5 miles from Grafton to Milford. GURR is owned by Mr. Delli Priscoli and was affiliated with the buyer under the P&S Agreement.

15. On or around July 9, 2020, the prior trustee of the Trust served a Notice of Intent to Sell Forest Land Subject to Chapter 61 Tax Lien on the Hopedale Board of Selectmen and other parties as required pursuant to M.G.L. c. 61, § 8 (the "Notice of Intent"). A true and accurate copy of the Notice of Intent is attached as **Exhibit A**.

16. In the Notice of Intent, the Trust indicated its intent to sell both parcels of land, not just the Chapter 61 Land.

17. In the Notice of Intent, the Trust indicated that the proposed use of the Property was "to provide additional yard and track space in order to support the current and anticipated increase in rail traffic of GU[RR]'s transloading operations."

18. Upon information and belief, GURR has no concrete or definitive plans for its future use of the parcels.

19. M.G.L. c. 61, § 8, provides, in pertinent part: "For a period of 120 days after the day following the latest date of deposit in the United States mail of any notice which complies with this section, the city or town shall have, in the case of intended sale, a first refusal option to meet a bona fide offer to purchase the land."

20. Section 9 of Chapter 53 of the Acts of 2020 provides:

Notwithstanding section 8 of chapter 61 of the General Laws, section 14 of chapter 61A of the General Laws, section 9 of chapter 61B of the General Laws or any other general or special law, charter provision, ordinance or by-law to the contrary, during and for a period of 90 days after the termination of the governor's March 10, 2020 declaration of a state of emergency, all time periods within which

any municipality is required to act, respond, effectuate or exercise an option to purchase shall be suspended.

21. Assuming the Notice of Intent was deposited in the mail on July 9, 2020, the statutory period for Hopedale to exercise its first refusal option to purchase the Chapter 61 Land would expire on November 7, 2020, which is 120 days after July 10, the day following the date of deposit of the Notice of Intent in the mail, without including any extension pursuant to Section 9 of Chapter 53 of the Acts of 2020.

22. Upon information and belief, the P&S Agreement contained a bona fide offer to purchase the two parcels, including the Chapter 61 Land.

23. After July 9, 2020, but within the statutory option period, the Town of Hopedale made multiple statements to representatives of the Trust and of GURR that clearly and expressly indicated that the Town was considering exercising its first refusal option to purchase the Chapter 61 Land.

24. On October 7, 2020, counsel for the Trust sent a letter to Hopedale purporting to withdraw the Notice of Intent:

[T]he Notice of Intent is hereby withdrawn in its entirety by One Hundred Forty Realty Trust, the property owner and shall be deemed of no further force and effect... Any further notice to sell or convert the land will be subject to a new Notice of Intent. To the extent that the Notice of Intent constituted an offer to sell to the Town of Hopedale, said offer is withdrawn.

A true and accurate copy of the October 7, 2020, letter is attached as **Exhibit C**.

25. On October 8, 2020, counsel for the Town of Hopedale sent a letter to the Trust and GURR stating that the purported withdrawal of the Notice of Intent was not effective because, by operation of law, the “first refusal option ripened into an irrevocable option to purchase which vested when the Town received the Notice of Intent.” The letter further advised the Trust and GURR “that the Town of Hopedale will proceed to consider whether to exercise its

option to purchase the portion of the property located at 364 West Street which is classified forest land under Chapter 61 according to the terms of the offer contained in the Notice of Intent.” A true and accurate copy of the October 8, 2020, letter is attached as **Exhibit D**.

26. Despite knowing that the Town of Hopedale was actively considering exercising its first refusal option, the Trust and GURR entered into a series of transactions which accomplished an end run around the P&S Agreement.

27. First, the Trust conveyed by quitclaim deed to GURR the parcel located at 363 West Street and the non-classified portion of 364 West Street (i.e., the non-Chapter 61 Land) for consideration of \$1.00. This quitclaim deed is dated October 12, 2020, and is recorded in the Registry in Book 63493, Page 34.

28. Second, the owner of 100% of the beneficial interest of the Trust assigned the beneficial interest to GURR for consideration of \$1,175,000.00 (the same amount as the purchase price in the P&S Agreement). The Assignment of Beneficial Interest is also dated October 12, 2020, and is recorded in the Registry in Book 63493, Page 39.

29. Third, the trustees of the Trust, Charles E. Morneau and Gregg Nagel, resigned as trustees. Their resignations are also dated October 12, 2020, and are recorded in the Registry in Book 63493, Pages 43 & 45 (respectively).

30. Fourth, the Trust appointed successor trustees—the defendants named herein—who are affiliated with GURR: Mr. Delli Priscoli (CEO of GURR) and Mr. Milanoski (President of GURR). The appointment of successor trustees to the Trust is dated October 14, 2020, and is recorded in the Registry in Book 63508, Page 8. The certificate of appointment and acceptance of appointment is also dated October 14, 2020, and is recorded in the Registry in Book 63508, Page 11.

31. As a result of these transactions, GURR now owns the controlling beneficial interest in the Trust, which holds legal title to the Chapter 61 Land.

32. On October 24, 2020, at a Special Town Meeting attended by over 400 residents, the Town of Hopedale adopted warrant articles by unanimous consent to appropriate money for the acquisition of the Chapter 61 Land and to maintain and preserve the Chapter 61 Land “and the forest, water, air, and other natural resources thereon for the use of the public for conservation and recreation purposes to be managed under the control of the Hopedale Parks Commission.”

33. Upon information and belief, on or around October 27, 2020, agents and/or representatives of the Trust and/or GURR began to undertake site work activities on the Chapter 61 Land, including but not limited to flagging for wetlands delineation and tree cutting.

34. At a duly noticed public hearing held on October 30, 2020, the Hopedale Board of Selectmen voted 2-0 to exercise the first refusal option to purchase the Chapter 61 Land.

35. Hopedale recorded notice of the decision to exercise the first refusal option in the Worcester South District Registry of Deeds on November 2, 2020. A copy of the recorded Notice of Exercise is attached as **Exhibit E**.

36. On November 2, 2020, Hopedale sent the Notice of Exercise accompanied by a proposed purchase and sale agreement for the Chapter 61 Land to the Trust’s prior and current trustees by certified mail, as required by M.G.L. c. 61, § 8.

COUNT I
M.G.L. c. 231A, § 1 -- DECLARATORY JUDGMENT

37. Hopedale incorporates by reference the allegations in paragraphs 1 through 36 as if fully set forth herein.

38. An actual controversy exists between the Town of Hopedale and the Trust and GURR over the statutory first refusal option contained M.G.L. c. 61, § 8.

39. The Town of Hopedale seeks a binding declaration that the Notice of Intent complied with the provisions of M.G.L. c. 61, § 8; that the offer contained in the P&S Agreement was a bona fide offer to purchase the Chapter 61 Land; that its first refusal option vested on July 10, 2020, the day following the latest date of deposit in the United States mail of the Notice of Intent; and that, as a result, the Town of Hopedale now holds an irrevocable option to purchase the Chapter 61 Land for the statutory time period.

40. The Town of Hopedale seeks a further binding declaration that, pursuant to Section 9 of Chapter 53 of the Acts of 2020, the time period within which it is required to act to exercise its option to purchase is suspended for the duration of, and for a period of 90 days after the termination of, the governor's March 10, 2020, declaration of a state of emergency; and that the statutory 120-day time period within which the Town of Hopedale may act to exercise its option to purchase will not begin to run until that suspension is lifted.

41. The Town of Hopedale seeks a further binding declaration that the Trust and GURR are prohibited from taking any action or conducting any activities on or concerning the Chapter 61 Land which would result in any alienation of the Chapter 61 Land or any conversion of its current use as forest land until such time as the Town of Hopedale no longer holds the option to purchase.

42. The Town of Hopedale seeks a further binding declaration that it is entitled to specific performance of its first refusal option to purchase the Chapter 61 Land on the same terms and conditions that the GURR-affiliated buyer offered to the Trust in the P&S Agreement.

43. The Town of Hopedale seeks a further binding declaration that the Trust's assignment of 100% of its beneficial interest to GURR was equivalent to a transfer of title to the Chapter 61 Land and therefore constituted a sale of land taxed under Chapter 61 giving rise to a separate and independent first refusal option in the Town of Hopedale.

COUNT II
TEMPORARY RESTRAINING ORDER/PRELIMINARY INJUNCTIVE RELIEF

44. Hopedale incorporates by reference the allegations in paragraphs 1 through 43 as if fully set forth herein.

45. M.G.L. c. 61, § 8, provides Hopedale with a first refusal option to meet any offer to purchase land protected under Chapter 61. Hopedale has a 120-day period to exercise this option, subject to any suspension of this time period pursuant to Section 9 of Chapter 53 of the Acts of 2020.

46. Hopedale is likely to prevail on the merits of its claim to have an irrevocable option to purchase the Chapter 61 Land, such that Hopedale can meet the offer contained in the P&S Agreement and purchase the Chapter 61 Land within the statutory time period.

47. If an injunction is denied and the Trust and/or GURR are able to impair the quality of the Chapter 61 Land by conducting site work, Hopedale will suffer irreparable harm by the loss of valuable land for conservation, recreational, and water supply protection purposes. Given the unique nature of land, Hopedale's harm is not likely to be remedied by money damages.

48. In light of Hopedale's likelihood of success on the merits, the risk of irreparable harm to Hopedale far outweighs any potential harm to the Trust and/or GURR if an injunction is not issued, since the defendants have already acquired controlling interests in all the land that was the subject of the P&S Agreement, and will merely have to wait to perform site activities on the

Chapter 61 Land until such time as the Town of Hopedale no longer holds the option to purchase.

**COUNT III
SPECIFIC PERFORMANCE**

49. Hopedale incorporates by reference the allegations in paragraphs 1 through 48 as if fully set forth herein.

50. Pursuant to M.G.L. c. 61, § 8, Hopedale holds a first refusal option to purchase the Chapter 61 Land.

51. The Hopedale Board of Selectmen validly exercised the first refusal option to purchase the Chapter 61 Land on behalf of the Town of Hopedale.

52. Hopedale sent the Trust, which is now controlled by GURR, a proposed purchase and sale agreement for the Chapter 61 Land which contained substantially the same terms and conditions as the original P&S Agreement that the GURR-affiliated buyer had offered the Trust for the intended sale set forth in the Notice of Intent.

53. Hopedale is ready, willing, and able to meet the original bona fide offer to purchase the Chapter 61 Land.

54. Upon information and belief, the Trust, now controlled by GURR, will not agree to sell the Chapter 61 Land to the Town despite the Town's valid exercise of the first refusal option to purchase under Chapter 61.

55. Failure by the Trust, now controlled by GURR, to sell the Chapter 61 Land to the Town will result in damage to the Town's existing and future water supply if the Town is not able to acquire and conserve the Chapter 61 Land and the Trust and GURR are able to develop the land instead.

REQUESTS FOR RELIEF

WHEREFORE, based on the foregoing, Hopedale respectfully requests that the Court enter the following relief:

1. Enter a temporary restraining order and/or a preliminary injunction preventing the Trust and/or GURR and each of their agents and representatives from alienating or converting the use of the Chapter 61 Land at any time before the expiration of the statutory first refusal option period set forth in M.G.L. c. 61, § 8, and as extended by Section 9 of Chapter 53 of the Acts of 2020;
2. Enter a judgment declaring the following:
 - a. that the Notice of Intent complied with M.G.L. c. 61, § 8;
 - b. that the offer contained in the P&S Agreement was a bona fide offer to purchase the Chapter 61 Land;
 - c. that the Town of Hopedale's first refusal option vested on July 10, 2020;
 - d. that, as a result, the Town of Hopedale now holds an irrevocable option to purchase the Chapter 61 Land for the statutory time period;
 - e. that, pursuant to Section 9 of Chapter 53 of the Acts of 2020, the time period within which it is required to act to exercise its option to purchase is suspended for the duration of, and for a period of 90 days after the termination of, the governor's March 10, 2020, declaration of a state of emergency, and that the statutory 120-day time period within which the Town of Hopedale may act to exercise its option to purchase will not begin to run until that suspension is lifted;
 - f. that the Trust and GURR are prohibited from taking any action or conducting any activities on or concerning the Chapter 61 Land which would result in any

alienation of the Chapter 61 Land or any conversion of its current use as forest land until such time as the Town of Hopedale no longer holds the option to purchase;

g. that Hopedale is entitled to specific performance and conveyance of the Chapter 61 Land; and\

h. that the Trust's assignment of 100% of its beneficial interest to GURR was equivalent to a transfer of title to the Chapter 61 Land and therefore constituted a sale of land taxed under Chapter 61 giving rise to a separate and independent first refusal option in the Town of Hopedale;

3. Approve Hopedale's memorandum of *lis pendens*;

4. Enter an order for specific performance directing the Trust to convey the Chapter 61 land to the Town;

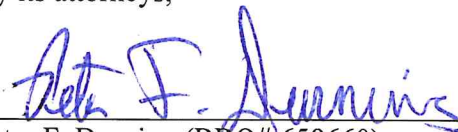
5. Enter an order permitting Hopedale and its agents or representatives to enter the Chapter 61 Land for inspection purposes at reasonable times and upon reasonable notice as permitted by M.G.L. c. 61, § 8; and

6. Enter such other relief as the Court deems just and proper.

Respectfully submitted,


TOWN OF HOPEDALE

By its attorneys,



Peter F. Durning (BBO# 658660)
Peter M. Vetere (BBO# 681661)
MACKIE SHEA DURNING, P.C.
20 Park Plaza, Suite 1001
Boston, MA 02116
(t) (617) 266-5104
pdurning@mackieshea.com
pvetere@mackieshea.com

Dated: November 2, 2020

CERTIFICATE OF SERVICE
I hereby certify that a true copy of the above
document was served upon the attorney of record
for each other party by mail, postage prepaid,
(hand delivering a copy of same) to all counsel of
record on November 2, 2020


VERIFICATION

I, Brian Keyes, Chair of the Town of Hopedale Board of Selectmen, have read the above Verified Complaint and now state, under penalties of perjury, that the facts stated therein are true to the best of my personal knowledge and that no material facts have been omitted.



**Brian Keyes, Chair
Hopedale Board of Selectmen**

Dated:

EXHIBIT 2

20 MISC 000467 Town of Hopedale v. Jon Delli Priscoli Trustee of the One Hundred Forty Realty Trust , et al. RUBIN
















- Case Type:
Miscellaneous
- Case Status:
Closed
- File Date
10/28/2020
- DCM Track:
- Initiating Action:
EQA - Equitable Action Involving Any Right, Title or Interest in Land, G.L. Chapter 185, § 1 (k)
- Status Date:
02/10/2021
- Case Judge:
Rubin, Hon. Diane R.
- Next Event:
10/13/2023

Property Information

364 West Street
Hopedale






















- All Information
- Party
- Event
- Docket
- Financial
- Receipt
- Disposition



Docket Information






















<u>Docket Date</u>	<u>Docket Text</u>	<u>Amount Owed</u>	<u>Image Avail.</u>
10/28/2020	Complaint filed.		
10/28/2020	Uniform Counsel Certificate for Civil Cases filed by Plaintiff.		
10/28/2020	Case assigned to the Average Track per Land Court Standing Order 1:04.		
10/28/2020	Land Court miscellaneous filing fee Receipt: 418886 Date: 10/28/2020	\$240.00	
10/28/2020	Land Court surcharge Receipt: 418886 Date: 10/28/2020	\$15.00	
10/28/2020	Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction, filed.		
10/28/2020	Memorandum in Support of Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction, filed.		
10/28/2020	Affidavit of David Sarkisian, filed.		
10/28/2020	Plaintiff's Motion for Endorsement of a Memorandum of Lis Pendens, filed.		
10/28/2020	Emergency Motion for Short Order of Notice, filed.		
10/28/2020	Motion for Appointment of a Special Process Server, filed and ALLOWED. (Rubin, J.) Judge: Rubin, Hon. Diane R		 
10/28/2020	Summons and Hearing Notice issued on Application for Preliminary Injunction and Lis Pendens. Judge: Rubin, Hon. Diane R Event: Hearing on Preliminary Injunction and Lis Pendens Date: 11/04/2020 Time: 10:00 AM		
11/02/2020	Amended Verified Complaint filed.		
11/02/2020	Summons returned to Court with service on Grafton & Upton Railroad Company filed. Served in hand to Brenda Johnson, Sr. V.P., and authorized to accept service of process on October 29, 2020.		 
11/03/2020	Appearance of Donald C Keavany, Jr., Esq., Andrew P DiCenzo, Esq. for Jon Delli Priscoli Trustee of the One Hundred Forty Realty Trust, Michael R. Milanoski Trustee of the One Hundred Forty Realty Trust, Grafton & Upton Railroad Company, filed		 
11/03/2020	Event Resulted: Hearing on Preliminary Injunction and Lis Pendens scheduled on: 11/04/2020 10:00 AM Has been: Rescheduled to November 23, 2020 at 10:00 am. Counsel requested this continuance in order for them to connect with the Defendants counsel who was only recently engaged for this matter and has previously scheduled obligations. Based on certain representations from Defendants counsel giving the Town of Hopedale assurances that the defendants will not perform any tree removal at the subject property and will not take any steps to alienate ownership of the parcel prior to the hearing, Plaintiffs counsel agreed to a continuance. Hon. Diane R Rubin, Presiding		
11/03/2020	Summons and Hearing Notice issued on Application for Preliminary Injunction and Lis Pendens. Judge: Rubin, Hon. Diane R Event: Hearing on Preliminary Injunction and Lis Pendens Date: 11/23/2020 Time: 10:00 AM Counsel notified via email.		

Docket Date	Docket Text	Amount Owed	Image Avail.
11/16/2020	Defendants' Opposition to Plaintiff's Motion for Temporary Restraining Order, Motion for Preliminary Injunction and Request for Issuance of Memorandum of Lis Pendens and Request that the Court take No Action Pending the Issuance of a Declaratory Order by the Surface Transportation Board, filed.		 Image
11/16/2020	Affidavit of Michael R. Milanoski, filed.		 Image
11/19/2020	Reply Memorandum in Response to Defendants' Opposition to Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction and Motion for Endorsement of a Memorandum of Lis Pendens, filed.		 Image
11/23/2020	Copies of a Verified Petition for Declaratory Order of Grafton & Upton Railroad Company along with a Verified Statement of President, Michael Milanoski, filed with the Surface Transportation Board filed via email with the court.		 Image
11/23/2020	<p>Event Resulted: Hearing on Preliminary Injunction and Lis Pendens scheduled on: 11/23/2020 10:00 AM</p> <p>Has been: Hearing on Preliminary Injunction and Temporary Restraining Order held via Zoom. Attorney Durning, Attorney Vetere, Attorney Keavany, Attorney DiCenzo, and Attorney Austin appeared. Before the court are Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction; Memorandum in Support of Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction; Affidavit of David Sarkisian; Plaintiff's Motion for Endorsement of a Memorandum of Lis Pendens; Defendants' Opposition to Plaintiff's Motion for Temporary Restraining Order, Motion for Preliminary Injunction and Request for Issuance of Memorandum of Lis Pendens and Request that the Court take No Action Pending the Issuance of a Declaratory Order by the Surface Transportation Board; Affidavit of Michael R. Milanoski; and Reply Memorandum in Response to Defendants' Opposition to Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction and Motion for Endorsement of a Memorandum of Lis Pendens. On the morning of the hearing, Defendants also filed for the court's information the Verified Petition for Declaratory Order of Grafton and Upton Railroad Company and Verified Statement of Michael R. Milanoski. At issue is a 155 acre parcel of land located at 634 West Street in Hopedale, which was valued, taxed and assessed as forest land under G.L. c. 61 (the "Forest Land"). The Town hopes to maintain the parcel as forest land, while the Defendants hope to use the parcel in connection with operation of the Grafton & Upton Railroad. The Town seeks a declaration that Defendants are prohibited from converting the Forest Land which is protected under G.L. c. 61 while the Town holds an option, an injunction to prevent the Defendants from converting the Forest Land to railroad use before expiration of a right of first refusal option period provided by Section 8 of Chapter 61 and ultimately specific performance of its right to purchase the Forest Land.</p> <p>A preliminary injunction may issue only if the moving party demonstrates (a) a likelihood of success on the merits, (b) that it faces a substantial risk of irreparable harm if the injunction is not issued, and (c) that this risk of irreparable harm outweighs any risk of irreparable harm which granting the injunction would create for the defendant. <i>Garcia v. Dep't. of Housing and Comty. Dev.</i>, 480 Mass. 736, 747 (2018); <i>GTE Prods. Corp. v. Stewart</i>, 414 Mass. 721, 722-724 (1993); <i>Packaging Indus. Group, Inc. v. Cheney</i>, 380 Mass. 609, 617 (1980). In cases involving government action, the moving party must also demonstrate that the requested order promotes the public interest or will not adversely affect the public. <i>Garcia</i>, supra, 480 Mass. at 747; <i>Loyal Order of Moose, Inc., Yarmouth Lodge #2270 v. Brd. Of Health of Yarmouth</i>, 439 Mass. 597, 601 (2003); <i>Commonwealth v. Mass. CRINC</i>, 392 Mass. 79, 89 (1984). At this juncture, for the reasons set forth below and as articulated on the record, Plaintiff's motion for injunctive relief is DENIED. On the record before the court, I cannot conclude that the Town has met its burden to prove a likelihood of success on the merits. The Town contends that the Grafton & Upton Railroad Company (the "Railroad") did not control the trust (which held title to the Forest Land) when the Town's Chapter 61 option to purchase vested. Specifically, when the time the Town received a Notice of Intent dated July 9, 2020 ("NOI"). Defendants disagree and further contend that the Town's exercise of the Chapter 61 option is preempted by the Interstate Commerce Commission Termination Act. While the Town is entitled to a right of first refusal under Chapter 61, it is not clear whether an option period has been triggered and if so, when that occurred. The July 9, 2020 NOI appears to be defective because it encompassed both Chapter 61 forest land and another parcel of land without Chapter 61 protections, but did not include segregated valuations for each parcel. The NOI was defective because it did not provide adequate statutory notice to the Town of the cost to purchase the Chapter 61 land as required and therefore did not constitute a bona fide offer. <i>Town of Brimfield v. Caron</i>, 18 LCR 44, 50-51 (2010) (Long, J.). As such, it does not appear that the Town's right of first refusal ripened into an option on July 9, 2020. Strict compliance is required for options under Chapter 61. <i>Town of Sudbury v. Scott</i>, 439 Mass. 288, 297 (2003); <i>Town of Billerica v. Card</i>, 66 Mass. App. Ct. 664, 668 (2006); <i>Smyly v. Town of Royalston</i>, 15 LCR 502, 504-05 (2007) (Trombly, J.). What is less clear is whether the course of dealings by and between the parties after July 9, 2020, gave rise to a valid option right and when the right to exercise the option expires. That course of conduct included, for instance, the assignment of the Trust's beneficial interest to the Trust, designation of the Railroad's officers as successor trustees of the Trust, and the October 15, 2020 letter from the Railroad to the Town, as well as the Town's notice of a defective NOI and withdrawal of the NOI. Without a clear trigger date for the Town's exercise of its option, I cannot determine whether the Interstate Commerce Commission Termination Act preempts the Town's right to purchase land which the Defendants contend is land intended for use as transportation by rail. Defendants have requested an opportunity to refer the issue of preemption to the Surface Transportation Board ("STB"); as of the date of the hearing, Defendants had filed a petition with the STB.</p> <p>As to irreparable harm, the parties have agreed to work cooperatively together to prepare a stipulation to maintain the status quo while the STB proceedings and this Land Court case are pending. That stipulation is to address Defendants' commitments to maintain the Forest Land consistent with the Forest Management Plan now in effect and not to alienate the Forest Land while this STB petition and this Land Court case are pending. That Stipulation to be filed with the court by December 1, 2020, for court endorsement. Also by December 1, 2020, the parties shall advise: (1) whether the Stipulation is sufficient to address the Town's request for endorsement of a memorandum of lis pendens or whether the Town renews its motion for lis pendens; and (2) whether the Land Court should stay these proceedings while mediation and the STB proceedings are underway. Court inquired into the possibility of Alternative Dispute Resolution ("ADR") and counsel agreed to participate in a mediation screening. Following colloquy, court to issue a Mediation Screening Order. By January 22, 2021 parties to complete mediation screening. By the January 25, 2021 parties to submit written joint report to the court as to outcome of the mediation screening, whether parties are willing to attend mediation, and if so, naming mediation provider, identity of neutral, and date of session. Hon. Diane R Rubin, Presiding</p> <p>Notice of docket entry sent to counsel via email.</p>		
11/23/2020	Alternative Dispute Resolution: Early Intervention Event held. Judge: Rubin, Hon. Diane R		
11/23/2020	ADR referral to REBA Dispute Resolution, Inc. issued. Judge: Rubin, Hon. Diane R		
11/24/2020	Order Referring Case to Dispute Resolution Screening Session, issued. (Copies emailed to Attorneys Don Keavany, Peter F. Durning, Andrew DiCenzo, Sandra Austin, and Peter M. Vetere) Judge: Rubin, Hon. Diane R		 Image
11/30/2020	Event Scheduled Judge: Rubin, Hon. Diane R Event: Case Management Conference Date: 02/17/2021 Time: 02:30 PM Notice of hearing mailed to counsel.		
12/01/2020	Stipulation of the Parties filed and ALLOWED. The Court hereby adopts the terms of the Stipulation. Counsel notified via email.		 Image

	Judge: Rubin, Hon. Diane R	
12/14/2020	ADR Report of REBA: Parties have a Mediation Screening on December 17, 2020.	
01/25/2021	ADR Report of REBA: Parties Mediated with the Hon. Leon J. Lombardi (ret.) on Friday, January 8, 2021 and Thursday, January 21, 2021 and this case settled.	
01/25/2021	Counsel emailed the court requesting a thirty day stay of this case to February 24, 2021 following mediation and settlement of this case. The court allowed this request, Counsel is to also file a joint status report on that date as well.	
	Judge: Rubin, Hon. Diane R	
02/10/2021	Event Resulted: Case Management Conference scheduled on: 02/17/2021 02:30 PM Has been: Canceled For the following reason: Case Reported Settled. Counsel will be filing a Stipulation of Dismissal. Hon. Diane R Rubin, Presiding	
02/10/2021	Stipulation of Dismissal - Mass.R.Civ.P. 41(a)(1)(ii)	
12/30/2021	Motion to Vacate Stipulation of Dismissal, filed.	
01/11/2022	Scheduled Judge: Rubin, Hon. Diane R. Event: Status Conference Date: 01/12/2022 Time: 02:30 PM	
01/12/2022	Event Resulted: Status Conference scheduled on: 01/12/2022 02:30 PM Has been: Status conference held via videoconference. Attorneys Peter Durning and Peter Vetere appeared on behalf of the plaintiff and Attorneys Andrew DiCenzo and Donald Keavany appeared on behalf of the defendants. Attorneys David Lurie and Harley Racer also attended, as counsel for the citizens of Hopedale in the related Superior Court case. Court notes that a Motion to Vacate Stipulation of Dismissal was filed December 30, 2021, with no opposition filed, but that this status conference pertains only to scheduling issues and not to the merits of the motion. Counsel provided some background on the related Superior Court case (Case No. 2185CV00238), particularly that there is an injunction in place prohibiting the railroad from clearing trees or performing site work, but the injunction is set to expire on January 31, 2022. Attorney Durning advised that counsel for the Town has filed an emergency motion for an extension of the injunction, which is currently pending in Superior Court. Plaintiff's counsel to notify the court as to any decision on that emergency motion. Court encouraged the parties to attempt to reach a new settlement, given the time, expense, and risk involved in litigating this matter in the event that the motion to vacate is allowed. In light of the request by the parties that the motion to vacate be resolved expeditiously, and if possible before the January 31, 2022 expiration of the injunction, Defendants to file any oppositions to the motion to vacate by January 18, 2022, with hearing scheduled for January 24, 2022 at 2:00 P.M. Hon. Diane R. Rubin, Presiding Counsel notified via email.	
01/13/2022	Scheduled Judge: Rubin, Hon. Diane R. Event: Motion Date: 01/24/2022 Time: 02:00 PM	
01/13/2022	Request for Interdepartmental Judicial Assignment and Transfer, filed.	
01/14/2022	Opposition to Request for Interdepartmental Judicial Assignment and Transfer, filed.	
01/18/2022	Response of Plaintiffs' to Request for Interdepartmental Judicial Assignment and Transfer, filed.	
01/18/2022	Defendants' Opposition to Plaintiff's Motion to Vacate Stipulation of Dismissal with Prejudice, filed.	
01/18/2022	Affidavit of Donald C. Keavany, Jr., Esq., filed.	
01/18/2022	Affidavit of Michael R. Milanoski, filed.	
01/19/2022	Supplemental Response Letter from the Town of Hopedale regarding the Request for Interdepartmental Judicial Assignment, filed.	
01/20/2022	Hopedale Citizens' Motion for Leave to Intervene with Incorporated Memorandum of Law, filed.	
01/20/2022	Hopedale Citizens' Supplement to their Request for Interdepartmental Judicial Assignment, filed.	
01/21/2022	Reply Brief in Support of Plaintiff's Motion to Vacate Stipulation of Dismiss, filed.	
01/24/2022	Defendants' Sur-Reply to Plaintiff's Motion to Vacate Stipulation of Dismissal with Prejudice, filed.	
01/24/2022	Event Resulted: Motion scheduled on: 01/24/2022 02:00 PM Has been: Hearing on Motion to Vacate Stipulation of Dismissal held via videoconference. Attorneys Peter Durning and Peter Vetere appeared on behalf of the plaintiff, with several members of the Board of Selectmen present, and Attorneys Andrew DiCenzo and Donald Keavany appeared on behalf of the defendants, with defendant Trustees present. Attorney Harley Racer also attended, as counsel for the citizens of Hopedale in the related Superior Court case, with several citizens in attendance. Before the court are: Plaintiff's Motion to Vacate Stipulation of Dismissal; Defendants' Opposition to Plaintiff's Motion to Vacate Stipulation of Dismissal with Prejudice; Affidavit of Donald C. Keavany, Jr., Esq; Affidavit of Michael R. Milanoski; Reply Brief in Support of Plaintiff's Motion to Vacate Stipulation of Dismissal; and Defendants' Sur-Reply to Plaintiff's Motion to Vacate Stipulation of Dismissal with Prejudice. Court is also in receipt of Hopedale Citizens' Motion for Leave to Intervene with Incorporated Memorandum of Law, and Hopedale Citizens' Request for Interdepartmental Judicial Assignment and Transfer. Following argument, court to take the motion to vacate, together with all supplemental filings, under advisement. Court notes that the railroad has agreed not to perform site work or clear trees until February 14, 2022, and encourages the railroad to refrain from doing so until a decision has been issued by the court. With respect to the motion to intervene, court defers consideration of that motion in light of the pending motion to vacate. Parties may file any responses or oppositions to the motion to intervene after such time as the court has issued a decision on the motion to vacate, with any party or the citizens of Hopedale to request a hearing, if they so choose. Hon. Diane R. Rubin, Presiding Counsel notified via email.	

<u>Docket Date</u>	<u>Docket Text</u>	<u>Amount Owed</u>	<u>Image Avail.</u>
01/25/2022	Hopedale Citizens' Emergency Motion for Expedited Hearing on their Motion to Intervene and Joinder of Town of Hopedale's Motion to Vacate the Stipulation of Dismissal, filed.		 Image
01/26/2022	G&U Defendants' Opposition to the Hopedale Citizens Emergency Motion for Expedited Hearing on their Motion to Intervene and Joinder of Town of Hopedale's Motion to Vacate the Stipulation of Dismissal, filed.		 Image
01/26/2022	Status Report, filed.		 Image
01/27/2022	<p>Upon consideration of the Hopedale Citizens' Emergency Motion for Expedited Hearing on Their Motion to Intervene and Joinder of the Town of Hopedale's Motion to Vacate the Stipulation of Dismissal, I exercise my discretion to DENY the Emergency Motion for Expedited Hearing. This case was closed almost a year ago with the filing of a stipulation of dismissal with prejudice by all parties to this case; the court currently has under advisement the Town's motion to vacate that judgment, which has been fully briefed and heard by the court.</p> <p>The Citizens seek to intervene as of right pursuant to Mass. R. Civ. P. 24(a) or alternatively, permissively pursuant to Mass. R. Civ. P. 24(b), and now ask to be heard on their motion before the court decides the pending motion to vacate. After the motion to vacate was filed on December 30, 2021, the court convened a status conference on January 12, 2022, specifically for the purpose of scheduling briefing and hearings on the motion to vacate. Counsel for the Citizens attended the January 12, 2022 status conference. At that conference, the court set a briefing schedule for the motion to vacate, with a hearing on the merits of that motion set for January 24, 2022. Despite being aware of the briefing schedule (with defendants' opposition being due on January 18, 2022), the Citizens delayed filing their Motion to Intervene until January 20, 2022, just days before the hearing. Instead, they first proceeded to seek interdepartmental assignment of this Land Court case to the Superior Court by letter dated January 13, 2022. The Citizens emergency motion for expedited hearing was not filed until January 25, 2022, one day after the hearing on the motion to vacate. Without reaching the merits of the motion to intervene, the emergency motion for expedited hearing is hereby denied as untimely. SO ORDERED.</p> <p>Counsel notified via email.</p> <p>Judge: Rubin, Hon. Diane R.</p>		 Image
01/28/2022	Decision on Plaintiff's Motion to Vacate, issued. (Copies emailed to Attorneys Peter M. Vetere, Peter F. Durning, Donald Keavany, Andrew DiCenzo, Harley Racer, David E. Lurie, Brian Riley, and Diana Schindler)		 Image
01/28/2022	G&U Defendants Supplemental Opposition to the Citizens' Request for Interdepartmental Judicial Assignment, filed.		 Image
02/01/2022	<p>The court today received an inquiry as to whether the court would be issuing a decision on the merits of the citizens' motion to intervene. However, that motion is moot since in a decision issued on January 28, 2022, the court declined to vacate the stipulation with prejudice filed by the parties to this case.</p> <p>Counsel notified via email.</p> <p>Judge: Rubin, Hon. Diane R.</p>		 Image
02/01/2022	Copy of a Letter from the Executive Office of the Trial Court sent to Atty. Harley Racer that the office will be taking no action on the Request for Interdepartmental Judicial Assignment, filed.		 Image
02/15/2022	Notice of Appeal by Town of Hopedale to the Appeals Court filed.		 Image
02/15/2022	Notice of Service of Notice of Appeal sent to Donald C Keavany, Jr., Esq., Andrew P DiCenzo, Esq. Counsel notified via email.		 Image
02/15/2022	Application for Injunction Pending Appeal, filed.		 Image
02/16/2022	Hopedale Citizens' Notice of Appeal, filed.		 Image
02/16/2022	Notice of Service of Notice of Appeal sent to Peter F Durning, Esq., Peter Vetere, Esq., Donald C Keavany, Jr., Esq., Andrew P DiCenzo, Esq. Counsel emailed copies.		 Image
02/16/2022	Intervenor-Plaintiffs', Hopedale Citizens, Joinder of the Town of Hopedale's Motion for Injunction Pending Appeal, filed.		 Image
02/16/2022	<p>Scheduled Judge: Rubin, Hon. Diane R. Event: Hearing Date: 02/23/2022 Time: 10:00 AM</p> <p>Counsel notified via email.</p>		 Image
02/22/2022	Defendants' Opposition to Plaintiffs' Application for Injunction Pending Appeal, filed.		 Image
02/22/2022	Affidavit of Michael R. Milanoski, filed.		 Image
02/22/2022	Motion to Strike Proposed Intervenor-Plaintiffs', Hopedale Citizens, Joinder of Plaintiffs' Application for Injunction Pending Appeal, filed.		 Image
02/22/2022	Intervenor-Plaintiffs' Reply to Defendants' Opposition to Motion for Injunction Pending Appeal, filed.		 Image
02/23/2022	Order Referring Case to a Supplemental Dispute Resolution Screening Session, issued. (Copies emailed to Attorneys Peter Vetere, Peter Durning, Donald Keavany, Andrew DiCenzo, Harley Racer, and David Lurie)		 Image
02/23/2022	<p>Event Resulted: Hearing scheduled on: 02/23/2022 10:00 AM</p> <p>Has been: Hearing on Motion for Injunction Pending Appeal held via videoconference. Attorneys Peter Durning and Peter Vetere appeared on behalf of the plaintiff, Attorneys Andrew DiCenzo and Donald Keavany appeared on behalf of the defendants, and Attorneys David Lurie and Harley Racer also attended, as counsel for the citizens of Hopedale in the related Superior Court case, with several citizens in attendance. Before the court are: Application for Injunction Pending Appeal; Intervenor-Plaintiffs', Hopedale Citizens, Joinder of the Town of Hopedale's Motion for Injunction Pending Appeal; Defendants' Opposition to Plaintiffs' Application for Injunction Pending Appeal; Affidavit of Michael R. Milanoski; Motion to Strike Proposed Intervenor-Plaintiffs', Hopedale Citizens, Joinder of Plaintiffs' Application for Injunction Pending Appeal; Intervenor-Plaintiffs' Reply to Defendants' Opposition to Motion for Injunction Pending Appeal.</p> <p>Before hearing argument on the motions, court inquired as to possibility of additional mediation to assist the parties in achieving a mutually agreeable resolution, particularly in light of the success of the previous mediation with the Hon. Leon J. Lombardi (ret.), and the</p>		 Image

	<p>time and expense that may be involved in litigating the matter given the complexity of the issues, the impact of the related Superior Court case on these proceedings, and the currently pending and potential future appeals, as well as potential proceedings before the Surface Transportation Board. Attorney Durning advised that he needs to confer with his client at the next board of selectmen meeting but believes the case may be suitable for further mediation. After conferring with his client in a zoom breakout room, Attorney Keavany indicated that defendants may be open to mediation, while expressing concerns regarding potentials for delay. Following colloquy, court to issue a mediation screening order, with the Citizens of the Town of Hopedale and their counsel also to participate, the court noting however that those citizens have not been joined to this case. By March 10, 2022, parties to complete mediation screening and submit a written joint report to the court as to outcome of the mediation screening, whether parties are willing to attend mediation, and if so, naming mediation provider, identity of neutral, and date of session. Argument on the motions before the court is deferred until hearing scheduled for March 22, 2022 at 9:30 am, to allow the parties an opportunity to mediate. Attorney Keavany noted that the Superior Court injunction is no longer in effect, and that the railroad had agreed not to perform site work or clear trees only until February 14, 2022. Court encouraged defendants to consider maintaining the status quo pending mediation. Hon. Diane R. Rubin, Presiding</p> <p>Counsel notified via email.</p>	
02/24/2022	Scheduled Judge: Rubin, Hon. Diane R. Event: Hearing Date: 03/22/2022 Time: 09:30 AM	
02/28/2022	ADR Report of REBA: Parties have a Screening on Friday, March 4, 2022.	
03/04/2022	ADR Report of REBA: Parties have a Mediation on Wednesday, March 9, 2022.	
03/11/2022	ADR Report of REBA: Parties Mediated with Judge Leon J. Lombardi (ret.) on March 9, 2022 but did not settle.	
03/22/2022	<p>Event Resulted: Hearing scheduled on: 03/22/2022 09:30 AM</p> <p>Has been: Hearing on Motion for Injunction Pending Appeal held via videoconference. Attorneys Peter Durning and Peter Vetere appeared on behalf of the plaintiff, Attorneys Andrew DiCenzo and Donald Keavany appeared on behalf of the defendants, and Attorneys David Lurie and Harley Racer also attended, as counsel for the citizens of Hopedale in the related Superior Court case. Before the court are: Application for Injunction Pending Appeal; Intervenor-Plaintiffs', Hopedale Citizens, Joinder of the Town of Hopedale's Motion for Injunction Pending Appeal; Defendants' Opposition to Plaintiffs' Application for Injunction Pending Appeal; Affidavit of Michael R. Milanoski; Motion to Strike Proposed Intervenor-Plaintiffs', Hopedale Citizens, Joinder of Plaintiffs' Application for Injunction Pending Appeal; Intervenor-Plaintiffs' Reply to Defendants' Opposition to Motion for Injunction Pending Appeal.</p> <p>The Town seeks an order during the pendency of appeal pursuant to Mass. R. Civ. P. Rule 62(c), enjoining the Defendants from causing any further alteration or destruction of certain forest land located at 364 West Street in Hopedale, which forest land was classified under Chapter 61 and allegedly entitled to the protections of that statute. Rule 62(c) provides: "When an appeal is taken from a final or interlocutory judgment . . . denying an injunction, the court in its discretion may . . . grant an injunction during the pendency of the appeal upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party." The Town's motion is considered in accordance with the familiar standard that a preliminary injunction may issue only if the moving party demonstrates (a) a likelihood of success on the merits, (b) that it faces a substantial risk of irreparable harm if the injunction is not issued, and (c) that this risk of irreparable harm outweighs any risk of irreparable harm which granting the injunction would create for the non-moving party. <i>Garcia v. Dep't. of Hous. and Comty. Dev.</i>, 480 Mass. 736, 747 (2018); <i>GTE Prods. Corp. v. Stewart</i>, 414 Mass. 721, 722-23 (1993); <i>Packaging Indus. Grp., Inc. v. Cheney</i>, 380 Mass. 609, 617 (1980).</p> <p>Here the Town, as the moving party, has the burden to demonstrate a substantial likelihood of success on the merits of its appeal and that it is threatened with irreparable injury if an injunction is not granted. <i>Kattar v. Demoulas</i>, Mass. Sup. Ct., No. 97-2022D (Essex County Feb. 14, 2000); <i>Sciaba Constr. Corp. v. Mass. Turnpike Auth.</i>, 412 Mass. 606 (1992). I conclude after hearing and consideration of the parties' filings that the Town has not met that burden. The Town's motion is DENIED for the reasons set forth on the record and as follows. This Land Court case was closed when all parties filed a stipulation of dismissal with prejudice, and Judgment entered against the Town. The case remains closed to this day, following my Decision denying the Town's motion to vacate, issued on January 28, 2022. The Town in its minimal filing has provided no basis for this court to diverge from the conclusions and reasons set forth in that Decision such as to support a finding of a likelihood of success on the merits of its appeal. Central to that Decision was my conclusion that the stipulation of dismissal with prejudice was "an adjudication on the merits as fully and completely as if the order had been entered after trial." <i>Boyd v. Jamaica Plain Co-op. Bank</i>, 7 Mass. App. Ct. 153, n.9 (1979). By dismissing the case, the Town effectively agreed that it had no right to proceed with the right of first refusal on the forest land. Further, with respect to the appeal, the standard of review for an appeal from a Mass. R. Civ. P. Rule 60(b)(6) decision is a showing of "clear abuse of discretion." <i>Adoption of Yvonne</i>, 99 Mass. App. Ct. 574, 582 (2021); <i>Trs. of Stigmatine Fathers, Inc. v. Sec'y of Admin. and Fin.</i>, 369 Mas. 562, 565 (1976). While the Town may disagree with my Decision, is has not advanced any argument or evidence to show a clear abuse of discretion. "A preliminary injunction will not be granted if the moving party cannot demonstrate a likelihood of success on the merits." <i>Lieber v. President and Fellows of Harvard Coll.</i>, 488 Mass. 816, 821-22 (2022). "The movant's likelihood of success is the touchstone of the preliminary injunction inquiry . . . without it, the remaining factors become idle curiosity." <i>Id.</i> (citing <i>Foster v. Comm. of Corr.</i>, 484 Mass. 698, 712 (2020)).</p> <p>Although I need not continue on to determine whether the Town would suffer irreparable injury and then balance the parties' respective harms, I note the Town's great concern that the forest land may be destroyed. In contrast, the Defendants have filed with their opposition an affidavit attesting to financial losses associated with the delay of the appeal, amounting to potentially seven figures, as well as their concern about the Town's financial capacity to respond to any award of damages. The Town disputes the amount of damages, but it has not filed any affidavits to support its claim of irreparable harm, while the Defendants have presented attested evidence.</p> <p>With respect to the Citizen Proposed Intervenor's Joinder of Application for Injunction Pending Appeal, I allow Defendants' Motion to Strike because this court has denied the motion to vacate such that there is no case to join and because judgment entered in this case many months ago without any intervention request by the Citizens. Further, I find that the interests of the citizens at this post-judgment phase of these proceedings are adequately represented by the Town, which has now sought to vacate the Decision and has appealed therefrom. The interests of the Citizens are therefore well protected at this point in these proceedings. <i>Town of Concord v. Littleton Water Dept.</i>, 27 LCR 130, 131 (2019) (Misc. Case No. 18 MISC 000596) (<i>Roberts, J.</i>) (quoting <i>Mass. Fed'n of Tchrs., AFT, AFL-CIO v. Sch. Comm. Of Chelsea</i>, 409 Mass. 203, 206 (1991), quoting 3B MOORE'S FEDERAL PRACTICE ¶ 24.07[4] (2d ed. 1987)). Hon. Diane R. Rubin, Presiding</p> <p>Counsel notified via email.</p>	
04/11/2022	Proposed Intervenor's Certification Regarding Transcripts of Trial Court Proceedings, filed.	
04/20/2022	Notice of Assembly of Record on Appeal sent to the Clerk of the Appeals Court.	
04/20/2022	Notice of Assembly of Record on Appeal sent to all counsel of record.	
04/26/2022	Copy of a Notice of Docket Entry that was entered in the Appeal Court case sent via email.	
04/27/2022	Motion for Voluntary Dismissal of Appeal, filed.	
		

Docket Date	Docket Text	Amount Owed	Image Avail.
04/27/2022	G&U Defendants' Joinder of Town of Hopedale's Motion to Dismiss Appeal Dismissal, filed.		
05/02/2022	<p>Before the court is Plaintiff's Motion for Voluntary Dismissal of Appeal pursuant to Mass. R. App. P. 29(a), wherein Plaintiff seeks voluntary dismissal of its February 15, 2022 Notice of Appeal, filed with respect to the Land Court's January 28, 2022 Decision on its Motion to Vacate Stipulation of Dismissal. Plaintiff reports that its appeal has not been docketed in the Appeals Court although Plaintiff recently received notice from the Recorder that the Record on Appeal had been fully assembled. All Defendants, Grafton & Upton Railroad Company, Jon Delli Priscoli and Michael Milanoski Trustees of One Hundred Forty Realty Trust, have filed notice of their support of Plaintiff's motion and ask that the Court treat the Town's Motion as a Stipulation of the Parties under Appellate Rule 29(a). Also before the court is an email from the proposed intervenor Hopedale citizens seeking an opportunity to respond to Plaintiff's motion and requesting a hearing thereon. Because the citizens are not parties to this case, the court declines to provide an opportunity for their participation in connection with the motion to dismiss appeal, by way of a hearing or otherwise. Mass. R. App. P. 29(a) provides for dismissal of an appeal by the lower court upon the filing of a stipulation signed by all parties before an appeal has been docketed in the appellate court. After due consideration, I ALLOW the Plaintiff's motion and treat it as a stipulation of dismissal in light of all parties concurrence thereto. Plaintiff's appeal is hereby dismissed.</p> <p>Counsel notified via email.</p> <p>Judge: Rubin, Hon. Diane R.</p>		
05/05/2022	Hopedale Citizens' Motion for Reconsideration of (1) Allowance of Town of Hopedale's Motion for Voluntary Dismissal of Appeal and (2) Denial of their Motion to Intervene, filed.		
05/05/2022	Affidavit of Elizabeth Reilly in support of Motion for Reconsideration, filed.		
05/06/2022	After due consideration and per Land Court Rule 9, Hopedale Citizens' Motion for Reconsideration is hereby DENIED.		
	Counsel notified via email.		
	Judge: Rubin, Hon. Diane R.		
05/09/2022	Hopedale Citizens' Amended Notice of Appeal, filed.		
05/09/2022	Notice of Service of Notice of Appeal sent to Donald C Keavany, Jr., Esq., Andrew P DiCenzo, Esq., Peter F Durning, Esq. Sent via email.		
05/09/2022	Case entered in the Appeals Court as Case No. 2022-P-0433.		
07/13/2022	Notice of Assembly of Record on Appeal sent to the Clerk of the Appeals Court.		
07/13/2022	Notice of Assembly of Record on Appeal sent to all counsel of record.		
08/19/2022	Notice from the Appeals Court of Failure to Enter Appeal Timely pursuant to Mass.R.A.P. 10(a)(1), filed.		
03/07/2023	Rescript Received from the Appeals Court. The order denying the citizens' motion to expedite hearing on their motion to intervene is affirmed. The order denying the citizens' motion to intervene as moot is vacated, and the matter is remanded for further proceedings consistent with the opinion of the Appeals Court, including consideration of the citizens' motion to join the town's motion to vacate the stipulation of dismissal..		 
03/20/2023	Appearance of David Stephen Mackey, Esq., Mina Makarious, Esq., Sean Grammel, Esq. for Town of Hopedale, filed		
03/20/2023	Withdrawal of Peter F Durning, Esq., Peter Vetere, Esq. for Town of Hopedale, filed		
03/22/2023	<p>Scheduled Judge: Rubin, Hon. Diane R. Event: Status Conference Date: 05/16/2023 Time: 02:30 PM</p> <p>Counsel notified via email.</p>		
05/03/2023	Hopedale Citizens' Post-Remand Memorandum in Support of their Motion for Leave to Intervene, filed.		
05/03/2023	Hopedale Citizens' Motion for Transfer, filed.		
05/03/2023	Hopedale Citizens' Motion to Vacate Stipulation of Dismissal, filed.		
05/03/2023	Hopedale Citizens' Memorandum in Support of their Motion to Vacate Stipulation of Dismissal, filed.		
05/03/2023	Town of Hopedale's Motion to Transfer, filed.		
05/03/2023	Town of Hopedale's Renewed Motion to Vacate Stipulation of Dismissal, filed.		
05/09/2023	Joint Status Report, filed.		
05/12/2023	Letter from Atty. Harley Racer regarding the SJC's denial of the Railroad Parties' Application for Further Appellate Review, filed.		
05/16/2023	<p>Event Resulted: Status Conference scheduled on: 05/16/2023 02:30 PM</p> <p>Has been: Status conference held via videoconference. Attorney Sean Grammel appeared on behalf of the plaintiff, Attorneys Andrew DiCenzo and Donald Keavany appeared on behalf of the defendants, with Attorney Joseph Antonellis also attending, and Attorneys David Lurie and Harley Racer appeared as counsel for the proposed intervenors, the Hopedale Citizens. Court is in receipt of Hopedale Citizens' Post-Remand Memorandum in Support of their Motion for Leave to Intervene; Hopedale Citizens' Motion for Transfer; Hopedale Citizens' Motion to Vacate Stipulation of Dismissal and Memorandum in support thereof; Town of Hopedale's Motion to Transfer; Town of Hopedale's Renewed Motion to Vacate Stipulation of Dismissal; Joint Status Report; and Letter from Atty. Harley Racer regarding the SJC's denial of the Railroad Parties' Application for Further Appellate Review. Court discussed with counsel the posture of the case following rescript from the Appeals Court (Case Nos. 22-P-314 and 22-P-433) and whether a briefing schedule should be set for any or all of the pending motions. Court inquired into the status of the Superior Court case (No. 2185 CV 00238) and counsel confirmed that the Superior Court case is closed. Court further inquired into the court's authority to request transfer of this case into the closed Superior Court and suggested instead that the Citizens and Town renew the earlier request to the Chief Justice of the Trial Court for interdepartmental consolidation and assignment under Trial Court Rule XII. Following colloquy, any party to file a Request for Interdepartmental Consolidation and Assignment under Trial Court Rule XII, if they so choose. Should such request be denied, court to put in place a briefing schedule for all other motions. Hon. Diane R. Rubin, Presiding</p>		

	Counsel notified via email.	
05/18/2023	Renewed Request for Interdepartmental Judicial Assignment and Transfer, filed.	
05/25/2023	Defendant's Opposition to Renewed Request for Interdepartmental Judicial Assignment and Transfer, filed.	
05/25/2023	Response off the Citizen Plaintiff's and the Town of Hopedale to Defendant's Opposition to Renewed Request for Interdepartmental Judicial Assignment and Transfer, filed.	
05/26/2023	Defendant's Supplemental Opposition to Renewed Request for Interdepartmental Judicial Assignment and Transfer, filed.	
07/19/2023	Letter from the Executive Office of the Trial Court stating that the Request for Interdepartmental Assignment has been denied, filed.	
07/20/2023	Scheduled Judge: Rubin, Hon. Diane R. Event: Status Conference Date: 08/21/2023 Time: 09:30 AM Counsel notified via email.	
08/01/2023	Hopedale Citizens' Unopposed Motion for Leave to Replace Two Named Citizens (Jason Beard and Amy Beard replaced by Michelle Smith and Melissa Mercon Smith), filed.	
08/21/2023	Event Resulted: Status Conference scheduled on: 08/21/2023 09:30 AM Has been: Held via video. Attorney David Mackey appeared on behalf of the plaintiff (the "Town"), Attorneys Andrew DiCenzo and Donald Keavany appeared on behalf of the defendants, and Attorneys David Lurie and Harley Racer appeared as counsel for the proposed intervenors, the Hopedale Citizens, as well as a number of the interested citizens. Status conference was held following denial of renewed request by the Town and the citizen to the Chief Justice of the Trial Court for interdepartmental consolidation and assignment under Trial Court Rule XII. Court also discussed with the parties the current status of proceedings in the federal court and the Surface Transportation Board, both of which involve the Town's eminent domain taking; with the Town advising that there is no reasons for this Court to stay these proceedings pending resolution of the federal court litigation. Court then reviewed with counsel the pending motions before it, including: Hopedale Citizens' Post-Remand Memorandum in Support of their Motion for Leave to Intervene; Hopedale Citizens' Motion for Transfer; Hopedale Citizens' Motion to Vacate Stipulation of Dismissal and Memorandum in support thereof; Town of Hopedale's Motion to Transfer; and Town of Hopedale's Renewed Motion to Vacate Stipulation of Dismissal. Court put in place the following briefing schedule. By August 31, 2023, defendants to file their opposition to the Hopedale Citizens' Motion for Leave to Intervene, any reply to be filed by September 15, 2023, and any further filings by any party to be filed by September 29, 2023. Hearing on the motion to intervene is scheduled in person for October 13, 2023 at 10:30 AM. In addition, Court ALLOWED Hopedale Citizens' Unopposed Motion for Leave to Replace Two Names Citizens. By September 15, 2023. Email notice to: Attorney David Mackey; Attorney Andrew DiCenzo; Attorney Donald Keavany; Attorney David Lurie and Attorney Harley Racer. Hon. Diane R. Rubin, Presiding	
08/21/2023	Notice of Docket Entry: Notice of Docket Entry was generated and sent to: Plaintiff: David Stephen Mackey, Esq. dmackey@andersonkreiger.com Plaintiff: Mina Makarious, Esq. mmakarious@andersonkreiger.com Plaintiff: Sean Grammel, Esq. sgrammel@andersonkreiger.com Defendant: Donald C Keavany, Jr., Esq. dkeavany@chtmlaw.com Defendant: Andrew P DiCenzo, Esq. adicenzo@chtmlaw.com For Notice Purposes Only: Interested Party: David E. Lurie, Esq. dlurie@luriefriedman.com Interested Party: Harley C. Racer, Esq. hracer@luriefriedman.com	
08/21/2023	Scheduled Judge: Rubin, Hon. Diane R. Event: Motion to Intervene AT THE COURTHOUSE Date: 10/13/2023 Time: 10:30 AM	

EXHIBIT 3

COMMONWEALTH OF MASSACHUSETTS
LAND COURT DEPARTMENT
OF THE TRIAL COURT

FILED

WORCESTER, SS

CIVIL ACTION NO.20MISC 00467

TOWN OF HOPEDALE

Plaintiff

vs.

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

Defendants

)
) December 1, 2020
)
) ALLOWED.
) (Rubin, J.)
) (m)
)
)
)
)
)
)
)

STIPULATION OF THE PARTIES

In light of the hearing conducted by the Court (Rubin, J.) on Monday, November 23, 2020, the Plaintiff and the Defendants hereby stipulate to the following:

1. The Defendants will not alienate, convey, or transfer title to, or change the use of or remove from classification, or act contrary to the existing forest management plan governing the 130.18 acres of land classified as forest land pursuant to M.G.L. c. 61, which are described in the Tax Lien recorded in the Worcester South District Registry of Deeds in Book 52875, Page 355, located at 364 West Street in Hopedale, MA, and which are owned by Jon Delli Priscoli and Michael R. Milanoski, as Trustees of One Hundred Forty Realty Trust, until the earlier of: (1) a stipulation between the parties permitting such alienation, conveyance, title transfer, or change of use; (2) after notice and an opportunity to be heard before this Court; (3) upon a determination by the Surface Transportation Board that the Town's claims are preempted, including

any appeals thereof; or (4) dismissal of this action. Notwithstanding the foregoing, the Plaintiff and the Defendants acknowledge that the Tennessee Gas Pipeline Company (TGPC) operates and maintains a high pressure natural gas transmission pipeline on a permanent right of way and easement over and across a portion of the land classified as forest land under a Right of Way Agreement, and further that TGPC provided notice to One Hundred Forty Realty Trust of its intention to commence a mowing program on or about November 23, 2020 in accordance with the Right of Way Agreement. The Plaintiff and Defendants acknowledge and agree that the Defendants are under no obligation to incur any cost or expense associated with interfering, minimizing, or stopping the TGPC mowing program identified in the November 23, 2020 notice, a copy of which is attached hereto as Exhibit 1.

2. The Plaintiff and Defendants further stipulate and agree to a stay of the Land Court proceedings through January 25, 2020 so that they may engage in the mediation screening process with REBA Dispute Resolution, Inc., pursuant to the Court's Order Referring Case to Dispute Resolution Screening Session. The Plaintiff and the Defendants will report back to the Court on or before January 25, 2020 to advise the Court of the status of the mediation screening process and whether a further stay of these proceedings is warranted.
3. The Plaintiff and the Defendants shall not be prejudiced by stipulating to a stay of the Land Court proceeding.

Respectfully submitted,

TOWN OF HOPEDALE

/s/ Peter F. Durning

Peter F. Durning, BBO# 658660

Peter M. Vetere, BBO# 681661

Mackie Shea Durning, PC

20 Park Plaza, Suite 1001

Boston, MA 02116

617-266-5104

pdurning@mackieshea.com

pvetere@mackieshea.com

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

/s/ Donald C. Keavany, Jr.

Donald C. Keavany, Jr., BBO#631216

Andrew P. DiCenzo, BBO#689291

Christopher, Hays, Wojcik & Mavricos,
LLP

370 Main Street, Suite 970

Worcester, MA

508-792-2800

dkeavany@chwmlaw.com

adicenzo@chwmlaw.com

/s/ Sandra R. Austin

Sandra R. Austin, BBO#679246

Law Office of Sandra Rennie Austin

24 Bolton Street

Marlborough, MA 01752

508-281-2299

Sandra@attyaustin.com

EX 1



Tennessee Gas Pipeline
Company, L.L.C.
a Kinder Morgan company

November 23, 2020

ONE HUNDRED FORTY REALTY TRUST
31 CONANT ROAD
LINCOLN, MA 01773

Re: 2020 Mowing Program
Blackstone Lateral

Location: 002-005-00

Dear Neighbor,

Tennessee Gas Pipeline Company (Tennessee) operates and maintains a high pressure natural gas transmission pipeline on a permanent right of way and easement over and across lands owned by you. Tennessee has an on-going program to maintain and improve the safety and reliability of our pipeline system.

Tennessee patrols its pipelines by aerial surveillance (e.g. helicopter, small aircraft). This patrol program is designed to observe surface conditions along and adjacent to the pipeline right of way for indications of leaks, third party construction activity and other factors affecting safety and operation.

Overgrowth on the easement precludes a view of the ground within the immediate vicinity of the pipeline and to a large extent, limits the effectiveness of the surveillance of our facilities. Additionally, the presence of trees over the pipeline or within the right of way can cause physical damage to the pipeline. Roots can actually damage the coating on the pipeline which could jeopardize the integrity of the protective coating surrounding the pipeline.

In order to maintain a safe and efficient pipeline and provide continuous service to our end users, we have initiated a program to mow our right of way. The maintenance work will be done by Tennessee or its contractor, under the terms of the original Right of Way Agreement. This Agreement provides for the right from time to time to remove all trees and other obstructions from the pipeline right of way to protect the pipeline.

The purpose of the program is to render our rights of way as accessible and observable as they were at the time of the construction of the pipeline. Our mowing activities will begin on or about November 23, 2020, and should conclude within two months thereafter. All work will be done in a suitable workmanlike manner, and any disturbed lawn areas will be repaired to as close to its original condition as is practicable.

If there are any questions or concerns about the program, please contact Tim Hanson in our Hopkinton, MA office at 603-494-3387 or by email at tim_hanson@kindermorgan.com.

Very truly yours,

EXHIBIT 4

Land Court
100 South Main Street
Hamberton Square
Hamberton, MA 02108
(617)788-7470



ADR REFERRAL FORM

Filed
12/14/2020

COURT USE ONLY

DOCKET NUMBER

20 MISC 000467 (DRR)

CASE NAME

Marjos, LLC Town of Hopedale, Plaintiff(s)

Priscoli, et al, Defendant(s)

I. Case Information - see above, and attached docket.

II. Referral Information

Referral Date: December 3, 2020

Referral Source (Person & Event): DRR

Program(s) Referred to: REBA Dispute Resolution, Inc.

III. Report Back to Court & Next Event Date

Please report back to the court with the following information before the next court date or within any other time frames indicated below:

a. Information on Status of Referral:

- Parties elected / declined to participate in dispute resolution through the Program.
- Parties have not yet decided to enter ADR after initial screening.
- Parties did not contact program.
- Other (please specify): Mediation Screening on December 17th

b. Information on Dispute Resolution Services provided:

Type of dispute resolution selected: _____

Dates of dispute resolution session(s): _____

Outcome of dispute resolution process: Pending Settled Not settled On-going

SIGNATURE OF REPORTING PROGRAM COORDINATOR:

X

PLEASE PRINT NAME (FIRST, MIDDLE, LAST)

Peter Wittenborg

DATED

December 14, 2020

EXHIBIT 5



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

BOARD OF SELECTMEN

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

Town Administrator
Diana M. Schindler

Board of Selectmen
December 21, 2020

Call to order 7:00 p.m. via Zoom Meeting

Join Zoom Meeting

<https://us02web.zoom.us/j/86791458864?pwd=QjUyNTBBZUYvU2l5aGV3R1RUV0N1Zz09>

Meeting ID: 867 9145 8864

Passcode: 093846

RECEIVED

By Lisa M. Pedroli at 11:31 am, Dec 16, 2020

Pledge of Allegiance

A. Consent Items

1. Approval of November 23, 2020 Regular Minutes
2. Approval of November 30, 2020 Regular Minutes
3. Approval of the Amended October 13, 2020 Regular Minutes
4. Approval of the Amended October 20, 2020 Regular Minutes
5. Approval of the Amended October 30, 2020 Regular Minutes
6. Accepting the \$50 Donation to the Bancroft Library from Linda Norton. (Letter Attached)
7. Hopedale Girl Scouts, Drive-By Cookie Booths at the High School to take place on Saturday, weather permitting, from January 15- March 10, 2021 from 10 am-1 pm. Practices will be COVID compliant. Health Agent has approved with stipulations, attached.

B. Appointments and Resignations

1. Appointment of Call Fire Candidate, Alex Carchio (Letter Attached)
2. Appointment of Call Fire Candidate, Jennifer Richard (Letter Attached)
3. Resignation of Brian R. Keyes from the Field Ad Hoc Committee, effective November 25, 2020
4. Resignation of Cody Carneiro from the Hopedale Police Department effective November 23, 2020

C. New Business*

1. 2020 Annual ABCC License Renewals; Sign ABCC Retail Liquor License Renewal Application Form (Vote)
2. Sign ABCC 2020 Seasonal Population Increase Estimation Form (Vote)
3. Acknowledge Open Meeting Law Complaint and Response (Vote)

D. Old Business

1. Town Hall COVID Update: Town Hall closed to the public effective December 14, 2020; Departments are available by appointment only.
2. Green Communities Designation; Energy Reduction Plan Presentation & Adoption (Vote), *Mimi Kaplan, Associate Planner, CMRPC*
3. Accept Donation to the Town of Hopedale from an Anonymous Donor with following conditions:
 - a. For paying all fees, related to litigation, incurred to secure the 364 West Street Land Purchase as voted at Special Town Meeting on October 24, 2020, without limit.
 - b. All legal fees for Special Counsel incurred through December 10, 2020 will be paid within two weeks of presentment of invoice.
 - c. Quarterly payments to be direct deposited into Town revenue account in advance based on previous three-month average (if purpose remains consistent).

- d. To be revisited by Board of Selectmen quarterly. (Vote)
- 4. Green River Cannabis: Request to Address Community Host Agreement issued by the Town of Hopedale, *Constant Poholek, Owner*
 - a. A request to transfer the Host Agreement to another address in the Town of Hopedale. The Special permit was not granted by the Zoning Board of Appeals for 54 Mellen Street on December 9, 2020, and we are currently awaiting the transcript of the meeting and contemplating an appeal regarding the adverse decision by the Board.
 - b. It is in the best the interest of the Green River Cannabis Company Inc. and the Town of Hopedale to transfer said Host Agreement to another location in Town, selected by the Green River Cannabis Company Inc. appropriately zoned, that would be more suitable for the Company and residents within the Town of Hopedale.
- 5. Statement from Town Counsel re: Resignation of Christine Burke
- 6. **Right of First Refusal, 364 West Street, Attorney Peter F. Durning, Special Counsel**

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

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

- 1. Donation of two (2) wreaths from the Evergreen Center
- 2. Welcoming Glenda Hazard as the new Board of Selectmen

G. Requests for Future Agenda Items:

H. Administrator Updates (In Packet)

I. Executive Session

Motion: To move into Executive Session, pursuant to M.G.L. c.30A, § 21(a) for item # (3): To discuss strategy with respect to litigation that an open meeting may have a detrimental effect on the litigation position of the public body and the chair so declares. Roll Call Vote

Purpose: Litigation strategy re: Town v. Jon Delli Priscoli, Trustee, et als, Attorney Durning present.

**Please note the Board of Selectmen agenda may be subject to change and items not anticipated maybe discussed.*

Pursuant to Governor Baker's Order of March 12, 2020 suspending certain provisions of the Open Meeting Law (OML), G.L. c30A §18, and the Governor's Order of March 15, 2020 imposing limitations on the number of people that may gather in one place, this meeting of the Town of Hopedale Board of Selectmen will be conducted via remote participation.

If you wish to speak, please reserve comments until the Public Comment section of the meeting. If you are using video, you may either raise your hand to be acknowledged by the Chair or use the "Raise Your Hand" button. Please wait to speak until you are acknowledged by Chair. If participants cannot conduct themselves in accordance with these guidelines, they will be removed from meeting.

Also Streamed Live, click here: https://townhallstreams.com/towns/hopedale_ma

EXHIBIT 6

**Board of Selectmen
Regular Minutes
December 21, 2020**

Present, Chair Brian R. Keyes, Selectman Louis J. Arcudi, III, Selectman Glenda Hazard, Town Administrator Diana Schindler

Chair Keyes called meeting to order at 7:00PM

Pledge of Allegiance

Chair Keyes welcomed the newest member of the Board, Glenda Hazard. Chair Keyes congratulated her on winning the Selectman position. Selectman Arcudi echoed Chair Keyes sentiments.

A. Consent Items

1. Approval of November 23, 2020 Regular Minutes

Before approving the minutes, Selectman Arcudi instructed the Executive Assistant to make an addition, that he thanked Christine Burke for her service to the Town, not just as a Selectmen but also as Water and Sewer as well as her Stewardship to the Town during the November 23, 2020 Regular Minutes. Chair Keyes asked to note that he echoed Selectman Arcudi's sentiments.

Selectman Arcudi made it known that Selectman Hazard will not be able to vote on items 1-2 because she was not present as a Selectman during those meetings.

Selectman Arcudi made a motion to approve the November 23, 2020 regular minutes, with the addition he had. Chair Keyes seconded the motion.

Arcudi – Aye, Keyes - Aye

2. Approval of November 30, 2020 Regular Minutes

Selectman Arcudi and Chair Keyes stated that they both have read the November 30, 2020 regular minutes.

Selectman Arcudi made a motion to approve the November 30, 2020 Regular Minutes. Chair Keyes seconded the motion.

Arcudi – Aye, Keyes – Aye

3. Approval of the Amended October 13, 2020 Regular Minutes

Selectman Arcudi made a motion to move items 3, 4 and 5 to New Business "C,3" because it relates to that item (Open Meeting Law Complaint and Response). Selectman Arcudi stated that the Board could vote on these items once the Board has acknowledged the Item New Business "C,3" Open Meeting Law Complaint and Response. Chair Keyes seconded the motion.

Arcudi – Aye, Keyes – Aye

4. Approval of the Amended October 20, 2020 Regular Minutes

5. Approval of the Amended October 30, 2020 Regular Minutes

6. Accepting the \$50 Donation to the Bancroft Library from Linda Norton. (Letter Attached)

Chair Keyes read the letter from Robyn York regarding the donation by Linda Norton. Chair Keyes thanked Linda Norton for the kind donation and support for the Bancroft Library.

Selectman Arcudi made a motion to accept the \$50 donation from Linda Norton to the Bancroft Memorial Library. Chair Keyes seconded the motion.

Hazard – Aye, Arcudi – Aye, Keyes – Aye

7. Hopedale Girl Scouts, Drive-By Cookie Booths at the High School to take place on Saturday, weather permitting, from January 15- March 10, 2021 from 10 am-1 pm. Practices will be COVID compliant. Health Agent has approved with stipulations, attached.

Chair Keyes thanked the girl scouts for all their efforts.

Selectman Hazard made a motion to approve the Hopedale Girl Scouts, Drive-by Cookie Booths at the dates and location mentioned. Selectman Arcudi seconded the motion.

Hazard – Aye, Arcudi – Aye, Keyes – Aye

B. Appointments and Resignations

1. Appointment of Call Fire Candidate, Alex Carchio (Letter Attached)

Present: Chief Tom Daige.

Chair Keyes thanked Chief Daige and his Department for all of their efforts during the challenging weather Hopedale has recently gotten. Chair Keyes went on to read the appointment/recommendation letter for Alex Carchio, sent in by Chief Daige.

Chief Daige stated that Alex Carchio is a good addition to the Hopedale Fire Department, and he is excited to have him on Board. Alex could not make the meeting tonight because he is currently in training.

Selectman Arcudi appoint the Call Fire Candidate Alex Carchio, effective December 1, 2020. Selectmen Hazard seconded the motion.

Arcudi – Aye, Hazard – Aye, Keyes – Aye

2. Appointment of Call Fire Candidate, Jennifer Richard (Letter Attached)

Present: Chief Tom Daige

Chair Keyes read the appointment/recommendation letter for Jennifer Richard, sent in by Chief Daige.

Selectman Hazard made a motion to appoint Jennifer Richard as a Call Fire Candidate, effective December 1, 2020.

Selectman Arcudi seconded the motion.

Hazard – Aye, Arcudi – Aye, Keyes – Aye

3. Resignation of Brian R. Keyes from the Field Ad Hoc Committee, effective November 25, 2020

Chair Keyes stated that he spoke with the Field Ad Hoc Committee regarding his resignation, he feels that he can no longer participate in this Committee. Chair Keyes applauds the efforts of the Field Ad Hoc Committee and the Committee's accomplishments, from grants to the field improvement at Mellen Street or Phillips Street. Chair Keyes stated that there is a vacancy in the Field Ad Hoc Committee if anyone is interested.

Selectman Arcudi thanked Chair Keyes for his service and passion on the Field Ad Hoc Committee.

Jim Abbruzzese, a member of the Field Ad Hoc Committee thanked Chair Keyes on behalf of the Co-Chair and the rest of the Committee for his participation and guidance in the Committee.

Selectman Arcudi made a motion to accept the resignation of Brian R. Keys from the Field Ad Hoc Committee, effective November 25, 2020. Selectman Hazard seconded the motion.

Arcudi – Aye, Hazard – Aye, Keyes – Refuse

4. Resignation of Cody Carneiro from the Hopedale Police Department effective November 23, 2020

Present: Police Chief Giovanella

Chief Giovanella thanks Cody for his service to the Town of Hopedale. He added that Cody was a great asset to the Department, and he was always helpful. He assisted Lt. Martin in obtaining the COPS grant. Chief Giovanella stated that Cody started with the Town about 18 months ago.

Chief Giovanella brought to the Boards attention, that there seems to be a pattern that Hopedale Police Department becomes a training ground. The Police Department is losing outstanding officers to the surrounding areas. Chief Giovanella stated that he looks forward to future conversations with the Board to create a way to rectify this pattern. Chief Giovanella stated that other agencies are able to pay their Officers more than what Hopedale can offer.

Chair Keyes stated that this can be discussed and will be taken into consideration during the next budget cycle. Chair Keyes stated that if Hopedale is not financially competitive or benchmarked then we are not going to be able to hold onto talented Officer's that want to move forward in their careers.

Selectman Arcudi recognized that the exit interviews for Hopedale's Officers are very complimentary with letters regarding Chief Giovanella, the staff, the Town and the residents. Selectman Arcudi asked Chief Giovanella if he is able to provide benchmark statistics regarding what the cost is to train an officer for 18 months and then have them move on. Selectman Arcudi stated that without increases in salary, the Town is probably spending the same amount to train Officers, only to have them move on instead of increasing the salaries. Chief Giovanella expanded on Selectman Arcudi's statements, he stated that when an officer is hired, they are sent to the Academy for 26 weeks which costs \$3,500. The Officer is receiving a regular salary while at the Academy from the Hopedale Police Department. The Police Department also purchases the Officers equipment. While the Officer is at the Academy, to cover shifts so that at least two (2) officers are working in Town, the Police Department needs to backfill the shifts. Chief Giovanella stated that this roughly equals to \$40,000.

Selectman Arcudi stated that this information is very helpful when thinking of next years budgets. Selectman Arcudi thanks Chief Giovanella and his team for their time and service to the Town of Hopedale. Chair Keyes read the resignation letter by Cody Carneiro to the residents.

Selectman Arcudi made a motion to accept the resignation of Cody Carneiro from the Hopedale Police Department, effective November 23, 2020. Selectman Hazard seconded the motion.

Hazard – Aye, Arcudi – Aye, Keyes – Aye

C. New Business*

1. 2020 Annual ABCC License Renewals; Sign ABCC Retail Liquor License Renewal Application Form (Vote)

Selectman Arcudi made a motion to accept the Hopedale Country Club, Inc ABCC license renewal to go into effect January 1, 2021. Selectman Hazard seconded the motion.

Arcudi – Aye, Hazard – Aye, Keyes – Aye

Selectman Arcudi made a motion to accept 404 Main Street, Hopedale LLC, DBS Brother's Liquors ABCC license renewal to go into effect January 1, 2021. Selectman Hazard seconded the motion

Arcudi – Aye, Hazard – Aye, Keyes – Aye

Selectman Arcudi made a motion to accept the J&M and Sons Inc ABCC license renewal to go into effect January 1, 2021. Selectman Hazard seconded the motion.

Arcudi – Aye, Hazard – Aye, Keyes – Aye

2. Sign ABCC 2020 Seasonal Population Increase Estimation Form (Vote)

Selectman Arcudi made a motion to approve the Seasonal Population Increase Estimation Form. Selectman Hazard seconded the motion.

Arcudi – Aye, Hazard – Aye, Keyes – Aye

3. Acknowledge Open Meeting Law Complaint and Response (Vote)

Present: Attorney Brian Riley, KPLaw

Attorney Riley welcomed Glenda Hazard to the Board of Selectmen. Town Administrator, Diana Schindler gave some background regarding this item. She stated that the Town received an Open Meeting Law complaint that had to do with how some of the meeting minutes were published. She stated that Attorney Riley will be able to explain how we had to amend the minutes.

Attorney Riley stated that there were five (5) complaints regarding five (5) separate meetings that raised certain problems that, that party thought the Board had done incorrectly. Attorney Riley stated that there were a few instances where the Board was discussing the 364 West Street property. However, this was not specified on the agenda or meeting minutes when moved into Executive Session. When discussing the value, buying, or selling property, if there is a reason where you do not want to hurt your negotiating position, then the property location does not need to be stated. However, as soon as that is not an issue the property location needs to be identified during regular and executive session. Attorney Riley stated that the same standard applies to litigation as soon as stating the case name is not an issue, then the case name needs to be identified when moving into executive session. Attorney Riley stated that he feels the complaint was correct that the agenda and the minutes should have the address of the property identified because the Board was discussing 364 West Street and certain aspects of the property during open session.

Attorney Riley's recommendation is to amend the meeting minutes, so they are compliant with open meeting laws.

Selectman Arcudi asked Attorney Riley if the law offices that sent in the complaint have responded to Attorney Riley's letter response, sent to them on December 10, 2020? Attorney Riley stated that he did not send the letter to the law offices yet because he needs approval from the Board. The December 14, 2020 meeting was cancelled so Attorney Riley asked for an extension on the response deadline. Attorney Riley confirmed that the Board needs to vote and approve his letter response so that he can send it to the law offices. Attorney Riley also confirmed with Selectman Arcudi that he feels that the amendments to the October 13, 2020, October 20, 2020 and October 30, 2020 minutes are correct.

Selectman Arcudi made a motion to approve the Open Meeting Law Complaint Response by Attorney Riley, KPLaw. Selectman Hazard seconded the motion.

Arcudi – Aye, Hazard – Aye, Keyes – Aye

Chair Keyes stated that Selectman Hazard can acknowledge the vote regarding item "C,3" Acknowledge Open Meeting Law Complaint and Response (Vote) but cannot vote on the consent items A-C because she was not present as a Selectmen during those meetings.

a. Approval of Amended October 13, 2020 Regular Minutes

Selectman Arcudi made a motion to accept the amended October 13, 2020 minutes. Chair Keyes seconded the motion.

Arcudi – Aye, Keyes – Aye

b. Approval of Amended October 20, 2020 Regular Minutes

Selectman Arcudi made a motion to accept the amended October 20, 2020 minutes. Chair Keyes seconded the motion.

Arcudi – Aye, Keyes – Aye

c. Approval of Amended October 30, 2020 Regular Minutes

Selectman Arcudi made a motion to accept the amended October 30, 2020 minutes. Chair Keyes seconded the motion.

Arcudi – Aye, Keyes – Aye,

D. Old Business

1. Town Hall COVID Update: Town Hall closed to the public effective December 14, 2020; Departments are available by appointment only.

Town Administrator Diana Schindler stated that we have followed our neighboring communities last week by opening the Town Hall up for appointments only with staff being staggered (one person per office and remote work). We asked the restaurant that is located in Town Hall, Beyond Full, to do take out service only, and they complied. We also asked for Public Works to be diligent by being COVID compliant and to not have multiple people in work vehicles because they are not able to work remotely. Regarding the time frame, we are going to follow these guidelines into next year and will revisit this topic during next weeks meeting on December 28, 2020. The Town Administrator stated that she feels we should follow these guidelines for a few weeks with the possibility of opening Town Hall back up for limited hours at some point in the near future depending on the Governors orders. Chair Keyes asked for the Town's patience as we work through this period of being shut down again.

2. Green Communities Designation; Energy Reduction Plan Presentation & Adoption (Vote), *Mimi Kaplan, Associate Planner, CMRPC*

Present: Mimi Kaplan, Associate Planner, CMRPC

Mimi Kaplan shared the Energy Reduction Plan with the Board and the residents. Mimi stated that the energy reduction plan will be submitted with the Designation Application tomorrow. The energy reduction plan is the last piece for this application, everything else has been received. Mimi stated that for the energy reduction plan, we needed to establish the baseline usage. There are fifteen (15) Town owned buildings that use energy, as well as Town vehicles, traffic lights and other mechanisms. Mimi stated that the baseline energy usage is 23,582, split between the different energy users. Guardian Energy was the vendor that chosen to perform the audits and provided the Town with a table of about twenty (20) energy conservation measures that would provide about 24% energy savings from the baseline over five (5) years. Mimi stated that she had met with members of the Town that she has been working with to go over a list of which items will be implemented and when. Mimi stated that the project order can be modified. When the Town becomes designated, which is typically around February, the Town will be awarded a designation grant of approximately \$135,000. When the Town expends these funds, the Town will then be eligible to apply for competitive grants on a yearly basis.

Selectman Hazard asked Mimi if it is guaranteed that the Town will receive funding when applying for competitive funding? Mimi responded that it is not guaranteed, however, every Town she has worked with has received what they requested or close to what they requested. She has not heard of a Town being completely turned down. Selectman Arcudi asked the Town Administrator if the Capital Finance Committee has been participating in this? The Town Administrator stated we could get them involved and add to the Capital Plan. Selectman Arcudi thanked Mimi Kaplan for all her assistance with this.

Selectman Hazard made a motion to adopt the Energy Reduction Plan as presented. Selectman Arcudi seconded the motion.

Hazard – Aye, Arcudi – Aye, Keyes – Aye

3. Accept Donation to the Town of Hopedale from an Anonymous Donor with following conditions:
 - a. For paying all fees, related to litigation, incurred to secure the 364 West Street Land Purchase as voted at Special Town Meeting on October 24, 2020, without limit.
 - b. All legal fees for Special Counsel incurred through December 10, 2020 will be paid within two weeks of presentment of invoice.
 - c. Quarterly payments to be direct deposited into Town revenue account in advance based on previous three-month average (if purpose remains consistent).
 - d. To be revisited by Board of Selectmen quarterly. (Vote)

Chair Keyes asked the Town Administrator to provide a summary, he stated that he has not been a part of any meetings with the donor or the donor's liaison. The Town Administrator stated that there have been litigation costs incurred through

December 2020, totaling \$109, 681.40. She asked that the Selectmen vote to accept the donation totaling this amount so we can get an invoice or similar so the donor and have the money transferred over. Resident, Liz Reilly, Liaison to the donor stated that they were not aware of this amount, however, to please forward her the invoices and she will give the invoices to the donor to get them paid. Chair Keyes stated the Board will vote to accept the donation once they have received the invoices and get the money forwarded to the Town. Chair Keyes thanked Liz for her assistance with the donor.

4. Green River Cannabis: Request to Address Community Host Agreement issued by the Town of Hopedale, *Constant Poholek, Owner*
 - a. A request to transfer the Host Agreement to another address in the Town of Hopedale. The Special permit was not granted by the Zoning Board of Appeals for 54 Mellen Street on December 9, 2020, and we are currently awaiting the transcript of the meeting and contemplating an appeal regarding the adverse decision by the Board.
 - b. It is in the best the interest of the Green River Cannabis Company Inc. and the Town of Hopedale to transfer said Host Agreement to another location in Town, selected by the Green River Cannabis Company Inc. appropriately zoned, that would be more suitable for the Company and residents within the Town of Hopedale.

Present: Attorney Brian Riley, Town Counsel and Constant Poholek, Owner of Green River Cannabis

The Town Administrator stated that Constant has expressed to her, his desire to potentially appeal the Zoning Board decision that was made two (2) weeks ago (his location was denied by the ZBA) or to possibly move to another location. Diana Schindler explained that Green River Cannabis has applied for a location at 54 Mellen Street in Hopedale as a potential retail marijuana establishment. the Zoning Board denied their request for a special permit, more details of this can be found in the Zoning Boards meeting minutes. If Constant decides to change his location, this will require his Host Community Agreement to be updated. Constant also needs to update his Host Community Agreement regarding the timeline, the current host community agreement states that Green River Cannabis will be operational by early 2021. Constant stated that he is requesting from the Board that 54 Mellen Street or any other facility that would be acceptable to the Town. He is looking to possibly to transfer the host agreement to another location, Constant stated that he has a couple addresses within the Town that are a possibility and allowed within the Zoning Bylaws. Constant stated that the host agreement needs to be amended regarding the timeline, with no location secured he will not be able to be operational by early 2021. Chair Keyes stated that if Constant were to appeal then he would be willing to allow, with other Board members approval, an extension on his host community agreement. Chair Keyes stated that he would not entertain a change of address for the retail marijuana store until he has received a final decision from the Zoning Board of Appeals. Constant stated that a possible alternative location he is interested in is 54 Hopedale Street, which is behind a medical office. This would be an adult retail store but, in the future, possibly move towards medical marijuana. Selectman Arcudi stated that he is not in favor of 54 Hopedale Street as a possible location. It is located near schools and libraries.

Attorney Riley stated that there is no issue with the Board approving an extension to Green River's host agreement and that at some point in time changing the address for Green River is a possibility as well.

Chair Keyes stated that the Board will extend until December 21, 2021 the current host agreement with the current address of 54 Mellen Street. Constant will make a decision as an operation whether to appeal or not and to entertain another location that he'll come back to the Board to discuss if that is something he is looking to do.

Selectman Hazard made a motion to extend the host agreement with Green River Cannabis until December 21, 2021. Selectman Arcudi seconded the motion.

Hazard – Aye, Arcudi – Aye, Keyes – Aye

5. Statement from Town Counsel re: Resignation of Christine Burke

Present: Attorney Brian Riley, KPLaw

Attorney Riley read a statement from Town Counsel regarding the resignation of Christine Burke, the Town Administrator provided the letter on the screen for viewers. This letter can be found on the Hopedale Website within the packet attached at <https://www.hopedale-ma.gov/administrator-selectmen/agenda/board-selectmen-133>. Attorney Riley stated that to summarize the resignation of Christine Burke did not warrant any sort of legal ramifications. Selectman Arcudi thanked Christine Burke for all of her work and involvement with the Town of Hopedale. Ed Burt, Chair of the Water and Sewer Commission, praised Christine's accomplishments and hard work while serving Hopedale. Ed stated that when Christine sold her home, she still rented in Hopedale. Selectmen Hazard read a letter from Christine Burke regarding Christine's response to this complaint.

6. Right of First Refusal, 364 West Street, *Attorney Peter F. Durning, Special Counsel*

Present: Attorney Peter F. Durning

Attorney Durning shared with the public that on Thursday, December 17, 2020 he conducted the mediation screening with the Real Estate Board Association's dispute resolution services which was the organization that Judge Rubin had suggested but not required the parties to select. The mediation screening was primarily administrative, the parties discussed selecting a third party neutral and a potential schedule for mediation. At the mediation screening, before the Real Estate Board Association, Attorney Durning reserved making a firm commitment as to whether the Town will participate in the mediation pending review by the Board of Selectmen this evening. Attorney Durning stated that this is the issue at this time, whether to participate in a mediation session with the Grafton Upton Railroad before a retired land court Judge. Attorney Durning stated that from his perspective, participating in the mediation is a worthwhile endeavor. Attorney Durning stated that Judge Rubin was direct in her comments and instructions that the parties should think seriously about a negotiated solution, however, this was not an order. Attorney Durning stated that with mediation both parties do not get everything that they want but there could be potential solutions that could be achieved through this process. Regarding litigation, the Town has strong arguments on the application of general laws Chpt. 61 and its reservation of a right of first refusal to the Town but there is a risk that either the Service Transportation Board or the land court will rule in the Railroads favor. Attorney Durning feels that we have a strong argument that Hopedale is entitled to exercise its right of first refusal and maintain these lands at 364 West Street in forestry conservation for the benefit of the Town's current and future water supply. As stated in previous meetings, Railroads do have some protection from local and state regulations under the Interstate Commerce Commission Termination Act, however, Attorney Durning feels that we have strong arguments why the operation of general law Chapt 61 is not like state and local regulations that railroad have superseded due federal preemption in the past these issues are complex. Judge Rubin telegraphed this in her spoken and written comments at the land court. Attorney Durning believes that this is an issue of first impression as to whether or not the doctrine of federal preemption extends to a Town's right of first refusal. With that, the likelihood of appeals even after the conclusion of a judication of a land court or the Service Transportation Board is likely. This may add to the cost of litigation and the length of the appeal process. Attorney Durning stated that in his opinion he feels that it is prudent for the Board to take this opportunity to explore the possibility of a negotiated solution. He feels that a negotiated solution that preserves water quality in the aquifer and secures access to future water supply, while providing some accommodation to expand rail service should be achievable on a parcel of this size. Attorney Durning stated that if Grafton Upton Railroad is serious about making an agreement that could provide these benefits to Hopedale, we should be willing to have that discussion with them and a third party neutral. Therefore, Durning recommends that the Town agrees to conduct a mediation with the railroad to see if there is a sensible solution that can accomplish the goals of the Town and meet the concerns of the railroad.

Selectman Hazard asked Attorney Durning why should we move for mediation? The environmental partners study told us that we need the whole parcel to maintain our water supply, we have donors willing to pay for the land and the litigation fees. Attorney Durning responded that the environmental partners study strongly emphasizes the portion of the rail that is to the east of the tracks that that is the most proximate portion to the water supply. In some of the figures that the environmental partners provided, they discussed what would be necessary to secure the greatest advantageous area for the exploration of future water supply and that is focuses on the portion of parcel that is proximate to the pond and the wetlands. Durning feels that there is a potential for emphasizing those areas that are particularly important to the Town's water supply. Selectman Hazard stated that she is uncomfortable with the position we are in now; she is not sure how we can negotiate when she is not sure what we could offer. Durning responded one of the things he emphasized during the summer that railroads do not have to comply with state and local wetlands. If the Town were working in cooperation with the railroad, the Town could impose certain requirements that would be subject to a private agreement (between the Town and the railroad) as opposed to relying on the state and local wetlands regulations, this may provide greater protection for the Town's resources.

Selectman Arcudi asked Attorney Durning if the mediation will be non-binding. Attorney Durning confirmed that mediation will be non-binding. It is two parties in a litigation agreeing to go and have a brokered session with a third party neutral, a trained mediator and a retired land court Judge. The third party neutral will likely meet individually with the parties and together and see if there is a way to foster a discussion where the two sides can come to some resolution. Chair Keyes stated that because mediation is non-binding, this is an excellent opportunity to find out what the railroad can bring to the table as part of any kind of negotiation. Chair Keyes stated that there will be plenty of public, Board and Commission's input. Chair Keyes let the residents know that they will not be entering into a binding agreement without hearing input from the public, Boards and Commissions.

Chair Keyes opened the meeting for resident comments.

Selectman Arcudi made a motion to move forward based on the recommendation of Attorney Peter F. Durning to commit to non-binding mediation commencing on January 8, 2021. Selectman Hazard seconded the motion.

Arcudi – Aye, Hazard – Aye, Keyes – Aye

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

Selectman Arcudi welcomed Glenda to the Board of Selectmen. Selectman Arcudi thanked the Police and Fire Department for the Hopedale Santa Parade and all their hard work. He stated that the Friends of Historic Hopedale did a great job with the Town wide holiday light contest. He thanked the Highway, Police and Fire for their constant efforts during the recent snowstorm with keeping our roads clean. Chair Keyes stated that he echoes Selectman Arcudi's sentiments.

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

1. Donation of two (2) wreaths from the Evergreen Center

Chair Keyes thanked the Evergreen Center for their donation of two (2) wreaths.

2. Welcoming Glenda Hazard as the new Board of Selectmen

G. Requests for Future Agenda Items:

H. Administrator Updates (In Packet)

Selectman Arcudi made a motion to end regular session and move into executive session. Selectman Hazard seconded the motion.

Arcudi – Aye, Hazard – Aye, Keyes – Aye

Chair Keyes dissolved the meeting at 9:44PM

I. Executive Session

Motion: To move into Executive Session, pursuant to M.G.L. c.30A, § 21(a) for item # (3): To discuss strategy with respect to litigation that an open meeting may have a detrimental effect on the litigation position of the public body and the chair so declares. Roll Call Vote

Purpose: Litigation strategy re: Town v. Jon Delli Priscoli, Trustee, et als, Attorney Durning present.

EXHIBIT 7



TOWN OF HOPEDALE
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BOARD OF SELECTMEN

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

Town Administrator

Diana M. Schindler

**Board of Selectmen
January 4, 2021**

REVISED

11:12 am, Jan 04, 2021

Call to order 7:00 p.m. via Zoom Meeting

Join Zoom Meeting

<https://us02web.zoom.us/j/89187859158?pwd=MWQwazJ6Y0g1NTFEZFFvMnpwREF4UT09>

Meeting ID: 891 8785 9158

Passcode: 938899

Pledge of Allegiance

A. Consent Items

1. Approval of December 28, 2020 Regular Minutes

B. Appointments and Resignations

C. New Business*

1. Complete Streets Policy (Adopted by Road Commissioners on September 16, 2020); First Reading & Schedule Public Hearing

D. Old Business

1. License Renewal 2021– Cumberland Farms, Common Victualler (Vote)
2. COVID Updates
3. **Right of First Refusal, 364 West Street, Attorney Peter F. Durning, Special Counsel**

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

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

G. Requests for Future Agenda Items:

1. Appointment of Tree Warden until regular election, January 11, 2021
2. Joint Meeting with Finance Committee, Date TBD
3. Complete Streets Public Hearing, January 25, 2021

H. Administrator Updates (In Packet)

I. Executive Session

Motion: To move into Executive Session, pursuant to M.G.L. c.30A, § 21(a) for item # (3): To discuss strategy with respect to litigation that an open meeting may have a detrimental effect on the litigation position of the public body and the chair so declares. Roll Call Vote

Purpose: Litigation strategy re: Town v. Jon Delli Priscoli, Trustee, et als, Attorney Durning present.

**Please note the Board of Selectmen agenda may be subject to change and items not anticipated maybe discussed.*

Pursuant to Governor Baker's Order of March 12, 2020 suspending certain provisions of the Open Meeting Law (OML), G.L. c30A §18, and the Governor's Order of March 15, 2020 imposing limitations on the number of people that may gather in one place, this meeting of the Town of Hopedale Board of Selectmen will be conducted via remote participation.

If you wish to speak, please reserve comments until the Public Comment section of the meeting. If you are using video, you may either raise your hand to be acknowledged by the Chair or use the "Raise Your Hand" button. Please wait to speak until you are acknowledged by Chair. If participants cannot conduct themselves in accordance with these guidelines, they will be removed from meeting.

Also Streamed Live, click here: https://townhallstreams.com/towns/hopedale_ma

EXHIBIT 8

**Board of Selectmen
Regular Meeting Minutes
January 4, 2021**

Call to order 7:00 p.m. via Zoom Meeting

Present, Chair Brian R. Keyes, Selectman Louis J. Arcudi, III, Selectman Glenda Hazard, Town Administrator Diana Schindler

Chair Keyes convened the meeting at 7:00PM

Pledge of Allegiance

Consent Items

Approval of December 28, 2020 Regular Minutes

Chair Keyes asked if the December 28, 2020 minutes need to be updated regarding the discussion at last weeks meeting about the Tree Warden vacancy and what the protocol is regarding contacting a Town Employee. Selectman Arcudi stated that the minutes should not be changed as they are “for the record” the Board and Town Administrator will be able to clarify the Tree Warden vacancy at tonight’s meeting.

Selectman Arcudi made a motion to approve the December 28, 2020 Regular Minutes. Selectman Hazard seconded the motion.

Arcudi – Aye, Hazard – Aye, Keyes – Aye

Appointments and Resignations

Chair Keyes stated that there are no appointments or resignations for tonight’s meeting. Town Administrator Schindler explained to the Board and residents that the Tree Warden position is available for interested residents, more information regarding this vacancy can be found on the Town Website. The Town will be accepting candidates throughout the coming weeks. Town Administrator Schindler stated that we are hoping to get the appointment of the next Tree Warden on a the next agenda. Town Administrator Schindler clarified that Chris Nadeau, Highway Superintendent, is the point of contact for Tree Warden inquires, he is not the interim Tree Warden since he is not a resident of Hopedale. Schindler stated that we have had some applicants turn in their application already. If anyone else is interested in the Tree Warden vacancy to fill out a talent bank form that can be found on the website.

Town Administrator Schindler stated that regarding future Tree Warden inquires, until a new Tree Warden has been appointed, if there is an emergency to call 911 or Dispatch. If a resident has an issue with a tree, the Town does not yet have a Tree Warden to be able to assist residents with those issues. Once the new Tree Warden gets appointed, the Town will forward the residents inquires and information to the Tree Warden.

New Business*

Complete Streets Policy (Adopted by Road Commissioners on September 16, 2020); First Reading & Schedule Public Hearing

Town Administrator Schindler explained that the Hopedale Road Commissioner's voted to adopt this Policy at their meeting on September 16, 2020. A Complete Streets policy is indicating that a Town, when looking to do any road work is going to look at their streets as "Complete Streets". The Town is looking to see if they can implement any conditions that would help walkability, biking, accessibility for people of all ages and abilities. By setting this policy were making the commitment to do that each time we do some type of road construction. It does not mean we are always going to include Complete Streets amenities, that would be based on affordability and also the conditions of the road. The policy contains all the criteria that primarily would fall to the Highway Superintendent and Road Commissioners to be looking at those projects and then deciding regarding Complete Streets. The advantage of having a policy is you can get into a funding portal on through the mass DOT twice a year they give out \$400,000 of construction money and Town's can use that construction money to basically update or install sidewalks, crossings, bike paths or bike accommodations on roads. Most of Hopedale's streets are already what you would consider Complete Streets, the streets try to accommodate people of all ages and abilities. We generally would be just looking at areas where there are gaps in this or areas that could be improved.

Normally a Town will adopt the policy, this would require the Town to hold a public hearing. Town Administrator Schindler recommended we would advertise to get the policy out for the public hearing, take comments, and incorporate those into the policy. Then the Town would adopt it and then we would submit it to DOT. Once it's accepted and you are in the program, the next phase of it is that we are given a grant of \$35,000 for a prioritization plan so you would partner with an engineer consultant and the consultant and Town officials would review and determine what areas would be applicable.

Selectman Arcudi asked Town Administrator Schindler if this policy would require the Town of add bike lanes to the Downtown area? Town Administrator Schindler responded that the Town is not required to add bike lanes to the Downtown area. The policy is a commitment to review each project and see if complete streets would be able to be incorporated. However, it is not required to add bike lanes if the Town cannot support it or if it would affect other development of the Downtown area. Town Administrator Schindler stated that the Public Hearing is scheduled tentatively for January 25, 2021.

Old Business

License Renewal 2021 – Cumberland Farms, Common Victualler (Vote)

Selectman Hazard made a motion to accept the 2021 Common Victualler License Renewal for Cumberland Farms. Selectman Arcudi seconded the motion.

Hazard – Aye, Arcudi – Aye, Keyes – Aye

COVID Updates

Town Administrator Schindler stated that the Town Hall is still closed to the public, but appointments are available. Last week the Town was notified that the CARES Act funding that was expected to expire on December 30, 2020 has been extended for another year (December 2021). We expect at least \$100,000 or more depending on our final numbers on our FEMA reimbursement. We received communication from our Public Health Nursing contractor, Salmon VNA, they are contracted for some money for this year (roughly \$3,200). Salmon VNA asked for some additional monies for the work that they have done in the last few months and some money going into next year based on the work they expect to do regarding vaccines. Town Administrator Schindler stated that after reviewing the budget, she believes that we could support this request. The Town has been purchasing remote work devices to optimize Town employees working from home experience (battery backups, laptops, etc.).

Selectman Arcudi asked if there is a conflict between Town Hall being closed to residents and restaurants being allowed to be open at a certain percentage since it is a dual building? Town Administrator Schindler responded that she has been communicating with the owner, Richard Yancey, of Beyond Full, the restaurant located in the Town Hall building. They have discussed scheduling a meeting. Richard Yancey has agreed to doing take out only for the time being, instead of 25% capacity (this does not include staff). Town Administrator Schindler stated that the Town Hall does not have efficient ventilation. If customers are sitting in the restaurant unmasked, this will be ventilated throughout Town Hall. Beyond Full asked for a full abatement of their rent for the month of January since they are only doing take out. Town Administrator stated that she has a meeting with Richard Yancey to discuss how to move forward with this item. Administrator Schindler stated that she had spoke with a contractor regarding updated the Town Hall's ventilation system, however, the cost was more than the budget allowed. Selectman Arcudi asked if the Town could use some of the CARES Act funding to upgrade Town Halls ventilation system? Also, what is the plan of action to rectify this? Will we have a plan by next week? Selectman Arcudi feels that he would rather approve the rent abatement for Beyond Full for the month of January and come up with a strategy to upgrade the Town Hall's ventilation system than to put Town employee's health at risk. Town Administrator Schindler responded that she would put the rent abatement on the January 12, 2021 agenda.

Chair Keyes opened the meeting for comments. Town Administrator Schindler stated that most of the correspondence she has had with residents is regarding Tree's. Town Administrator Schindler stated that all other Departments are doing extremely well, almost every department is managing 1-2 grants, project initiatives and their day-to-day operations.

Right of First Refusal, 364 West Street, *Attorney Peter F. Durning, Special Counsel*
Attorney Durning provided a brief update from the last time he in front of the Board of Selectmen on December 21, 2020. At a previous meeting he stated that the Town will be going into mediation brokered by the Real Estate Board Association (REBA) with Judge Lombardi, a retired land court Judge, who will be serving as a third party neutral. This will take place on Friday, January 8, 2021. As part of the mediation agreement, the Board agrees to come back to not vote at the mediation session which is an executive session and come back to a public hearing on Monday January 11, 2021. Any material from the mediation that can be discussed openly and any agreement coming from the mediation will be discussed at the public portion of the meeting on January 11, 2021 meeting. Town Administrator stated that at a previous meeting, a question had been raised by a member of the public regarding bringing other persons into the mediation. Administrator Schindler stated that based on Attorney Durning's guidance, that the Board of Selectmen and the Town Administrator will be present at the mediation and that the information from the mediation will be brought back to an open session.

Chair Keyes opened this item for public questions. Resident Robert Fahey asked Chairman Keyes what his position is on the development at 364 West Street and if Chair Keyes supports this development? If yes, why? Chair Keyes stated that he supports development in the Town, and it is their duty to selectively explore what the Town should and should not develop. Chair Keyes stated that he is an advocate for listening. This will be an opportunity, based on guidance from Town Counsel, Attorney Durning and a strong recommendation and motion by a Judge in land court to listen and explore a potential agreement, in this case it is with the Railroad. Chair Keyes stated that he does not know what that development will consist of. He stated that he is not looking to compromise anything regarding water quality, water source, water protection or items associated with the environment. A resident asked Chair Keyes regarding the Freedom of Information Request that have been received by the Town and why all the requests wouldn't be brought up at public meetings? Chair Keyes stated that he asks that he be made aware of any requests regarding the Board and Department Heads. Chair Keyes stated that he does not have any apprehension regarding sharing these requested. Chair Keyes asked Town Administrator Schindler if every request could be made public? Town Administrator stated that going forward, she will begin adding these records requests to the Correspondence item on the agenda. Mainly, she is responsible for assisting with facilitate and organize these requests with the Town Clerk. The requests and responses are public. Town Administrator Schindler stated that the five Freedom of Information Act requests we have received for Town Officials are primarily for Water & Sewer Officials and the requests were made by the Grafton Upton Railroad, these have been responded to and the response is public. The first response is that the Town is not providing the records because the Town is currently in a mediation and litigation situation. Attorney Durning added that Brian Riley from KP Law with these requests, Durning feels that Riley is dealing with these requests well and correct. Attorney Durning stated that under the public request law in Massachusetts, there is no absolute requirement to bring awareness of a request being made to a public hearing.

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

Chair Keyes opened the meeting to the public and the Selectmen. Ed Burt, Chair of the Water & Sewer Commissioner's followed up on the email that was sent to Tim Watson and himself on December 31, 2020 regarding calls from residents regarding Water & Sewer equipment located at Tim Watson's, Water & Sewer Manager's property. Ed Burt stated that Tim Watson responded to Chair Keyes email that they were doing exploration on Ben's Way, they had cut a path through the golf course. Tim has worked out a pack with the abutters and that by storing the equipment on the golf course property, abutting Tim's property, Tim is saving the hassle of transporting the equipment back and forth and somewhere near \$10,000. Chair Keyes asked what the \$10,000 in savings is? Ed Burt responded that the savings is coming from not having to transport the equipment back and forth. Chair Keyes stated that Tim Watson did provide him with a detailed response regarding his inquiry. Chair Keyes concerns was the liability of the equipment while it is sitting at that property either vandalized or damaged. If the equipment was damaged while at the property, Chair Keyes was concern regarding the insurance coverage because the equipment is not parked where it states on the insurance. Ed Burt responded that Water & Sewer has taken care of these items.

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

Requests for Future Agenda Items:

Appointment of Tree Warden until regular election, January 11, 2021

Joint Meeting with Finance Committee, Date TBD

Complete Streets Public Hearing, January 25, 2021

Administrator Updates (In Packet)

Selectman Arcudi made a motion to enter into executive session, not to return to regular session.
Selectman Hazard seconded the motion.

Roll Call, Arcudi – Aye, Hazard – Aye, Keyes – Aye
Chair Keyes dissolved the meeting at 7:45PM

Executive Session

Motion: To move into Executive Session, pursuant to M.G.L. c.30A, § 21(a) for item # (3): To discuss strategy with respect to litigation that an open meeting may have a detrimental effect on the litigation position of the public body and the chair so declares. Roll Call Vote

Purpose: Litigation strategy re: Town v. Jon Delli Priscoli, Trustee, et als, Attorney Durning present.



HOPEDALE FIRE DEPARTMENT

40 Dutcher Street - Hopedale MA. 01747

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

www.hopedale-ma.gov/fire-department

Thomas M. Daige – Fire Chief

David J. McMorrow – Deputy Chief



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

January 5th, 2021

Re: Waiving Burning Permit Fees for 2021

Mr. Chairman,

In a continuous effort to follow Covid protocol and try to limit Fire Department members' interaction with the public and vice versa, I am respectfully asking that the Burning Permit Fee, which is a one-time \$5.00 charge, for the 2021 open-air brush burning season be forgiven for town residents.

Forgiving this fee will eliminate the need for the residents to come into the firehouse to pay the fee and fill out the paperwork. Our member's will simply keep a list of which residents are burning brush on a day-to-day basis.

We collect, on an average, \$600.00 annually from burning permit fees.

Respectfully,

Thomas M Daige

Thomas Daige
Fire Chief



HOPEDALE POLICE DEPARTMENT

70 Hopedale Street Hopedale, MA 01747
Tel: (508) 634-2227 Fax: (508) 634-2228



www.hopedalepolice.com

Chief of Police
Mark A. Giovannella

January 4, 2021

Board of Selectman
Town of Hopedale
Hopedale, MA 01747

Dear Board Members,

As a result of the departure of Officer Cody Carneiro to Milford PD, interviews for a full time police officer were conducted on November 4, 2020. As a result of those interviews, I respectfully request the board appoint, as Full Time Police Officer for the Town of Hopedale:

Kevin R. Kokansky of [REDACTED]

Kevin has graduated from Worcester State University with a Bachelor's Degree in Criminal Justice. He has also completed the Reserve/Intermittent Police Academy in Boylston in 2018. He currently works part-time as a police officer with the Hardwick/New Braintree Police Department since 2018.

If you have any questions or concerns please feel free to contact me..

Sincerely,

Mark A. Giovannella
Chief of Police

**KARLA HOPKINS
10 CUTLER ST
HOPEDALE, MA 01747**

December 31, 2020

Hopedale Board of Selectmen
Christopher Hodgens, Finance Committee Chairman
70 Hopedale St
Hopedale, MA 01747

Please accept this letter as my resignation from the Hopedale Finance Committee and Hopedale Capital Planning Committee effective January 7, 2021.

I have been privileged for many, many years to be a member of these committees and to serve the residents of Hopedale in that capacity. I have enjoyed the experience but have recently faced demands and changes in both my firm and personal life that I feel will not allow me to provide the level of dedication that these committees deserve from me.

I will continue to participate actively as a resident and wish you all the best as you continue to lead our community.

Sincerely,

Karla Hopkins

From: [Becca Solomon](#)
To: [Diana Schindler](#)
Subject: Tree Warden
Date: Tuesday, December 29, 2020 4:31:26 PM

Hi Diana,

I had heard at the BOS meeting last night that the Tree Warden had resigned. If the position is open, I would be happy to apply for it. I'm just not sure who to contact to do so.

I'm currently in the process of getting an ISA arborist certification and becoming ISA Tree Risk Assessment Qualified. If that, with my own degree in Natural Resources Management, which covers silvicultural and timber management practices is qualification enough, I'd be happy to put my name forward. Let me know who to contact and I can forward a resume or whatever else is needed. The ISA certifications will take some time to get, but I am already familiar with the process.

Thank you in advance,
-Becca Solomon

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

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

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

Board, Commission or Committee applying for:

Tree Warden

Please return completed forms to:

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

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

Please Note:

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

Name: Becca Solomon

Are you a registered voter? Yes No

Address: [REDACTED]

How long have you lived in Hopedale? 17 yrs

Home Phone: [REDACTED]

Cell Phone: [REDACTED]

E-Mail: [REDACTED]

How would you like to be contacted? E-mail or cellphone

Occupation: Conservation Commission Chair

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

business: N/A

Education and Experience: N/A

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

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

Yes No If yes what type of business? _____

Special interests and skills: Urban Forestry & Urban Sustainability

Activities, e.g. Government/Civic & Community/Charitable & Educational: Conservation Commission; Bachelor's Degree in Natural Resources Management (see below), and current continuing education with the International Society of Arboriculture. Volunteered work doing construction in Puerto Rico & Israel.
Reasons for wanting to serve: _____

Helps my community and furthers my career simultaneously.

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

Applicant's Signature _____ Date _____

- * Courses included:
- Silviculture
 - Soils
 - Dendrology
 - Ecology
 - Mycology
 - Accounting
 - Natural Resource Economics
 - Natural Resources Law and Policy
 - Recreation Behavior and Management
 - Measurements & Sampling Practices
 - ArcGIS

LICENSE AGREEMENT

This License Agreement (this "License") is entered this _____ day of January, 2021, by and between the **Town of Hopedale**, acting by and through its Board of Selectmen (the "Town"), having an address of 78 Hopedale Street, Hopedale, Massachusetts 01747, and the **Hopedale Country Club, Inc.** ("Licensor"), having an address of 90 Mill Street, Hopedale, Massachusetts 01747.

Whereas, Licensor is the lessee of a parcel of land located at 90 Mill Street, Hopedale, shown on Assessors Map 18-34-0 (the "Property");

Whereas, the Town has requested Licensor to grant the Town a license for the purpose of investigating a well, the construction of a temporary access road, and for the staging of heavy equipment, including, but not limited to, an excavator and backhoe at the Property; and

Whereas, Licensor is willing to grant the Town access to the Property for such purposes.

Now, therefore, the parties wish to enter into this License to set forth the terms of the Town's use of the Property:

1. **Use, Purpose, Term.** Licensor hereby grants the Town, including the Hopedale Water and Sewer Department, their agents, employees, contractors and representatives a non-exclusive license to enter upon and use the Property for the purpose of investigating and monitoring a well, the construction of a temporary access road, and the staging of heavy equipment, including, but not limited to, an excavator and backhoe. The Town may conduct its business from 7 a.m. to 5 p.m. Monday through Friday. The right and use described herein may be exercised for a period of _____ () days from the date of this License, unless sooner terminated in accordance with the provisions of Section 4 below. **At the termination of this License, the Town shall restore the Property to its original condition, as close as reasonably practicable, and remove all personal property.**

2. **Conduct.** During the exercise of the rights hereby granted, the Town and Licensor will confer and coordinate the construction work so as not to unreasonably interfere with Licensor's access to and use of the Property. Further, Licensor shall observe and obey all applicable laws, statutes, ordinances, bylaws, regulations and permitting or licensing requirements.

3. **Condition of Property.** The Town acknowledges and agrees that it accepts the Property in its "as is" condition for the purpose of this License, and that Licensor has made no representation or warranty regarding the fitness of the Property. Licensor shall not be liable to the Town for any injury or harm to persons or property except if such injury or harm is caused by the gross negligence or willful misconduct of Licensor and/or its employees, agents or representatives. The provisions of this Section shall survive the expiration or termination of this License.

4. **Termination and Revocation.** This License may be revoked by Licensor upon written notice of revocation given to the Town at least fourteen (14) days prior to the termination date stated in said notice. In the event that this License expires or is terminated by revocation pursuant to this Section, the Town, at its own expense, shall remove all its personal property from the Property. This obligation shall survive the expiration or termination of this License.

5. **Modifications and Amendments.** Modifications or amendments to this License shall be in writing and duly executed by both parties hereto to be effective.

6. **Notices.** For purposes of this License, the parties shall be deemed duly notified in accordance with the terms and provisions hereof, if written notices are mailed to the addresses noted above. These addresses are subject to change, and the parties hereto agree to inform each other of such change as soon as practicable.

7. **No Estate or Obligation Created.** This License shall not be construed as creating or vesting in the Town any estate in the Property, but only the limited right of use as hereinabove stated.

8. **Governing Law.** This License shall be governed and construed in accordance with the laws of the Commonwealth of Massachusetts.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this License Agreement to be executed on the date first indicated above.

LICENSOR:

TOWN OF HOPEDALE,
By Its Board of Selectmen

By: _____
Name:
Title:

Brian Keyes, Chair

Louis Arcudi, III

Glenda Hazard

December 31, 2020

Brian W. Riley
briley@k-plaw.com

BY ELECTRONIC MAIL ONLY
jondelli@firstcolonydev.com

Mr. Jon Delli Priscoli

Re: Public Records Requests - Town of Hopedale

Dear Mr. Delli Priscoli:

The Town of Hopedale (“Town”) is in receipt of your correspondence seeking certain Town records from five (5) Town employees and/or officials – specifically from Edward Burt, James M. Morin, Timothy J. Watson, Christine Burke and Sandra Holland. This letter serves as the Town’s response to each request.

In your requests, you seek the following records (the requests are identical as to each of the five named employees/officials):

Copies of all correspondence (including emails, texts or other forms of communications including using non-government emails) to and from (name of employee/official) that include the following person, persons or agencies: Representative Murray, Elizabeth Reilly (aka Liz Buchanan Reilly), DEP, EPA and IRAP for the last three years.

Please be advised that the Town does not consider any of your correspondence to be requests for public records under the Public Records Law pursuant to 950 CMR 32.06(1)(g). As you know, you are involved in an ongoing litigation proceeding pending before the Massachusetts Land Court that involves the Town and to which the records requested pertain. See *Town of Hopedale v. Jon Delli Priscoli, Trustee of the One Hundred Forty Trust and Grafton & Upton Railroad Company*, Massachusetts Land Court, 20 MISC 000467. Specifically, the Public Records Access Regulations, 950 CMR 32.06(1)(g), provide in relevant part that “a request for records in which an individual, or representative of the individual has a unique right of access by statutory, regulatory, judicial or other applicable means, shall not be considered a request for public records.” In this instance, the emails and other records you have requested pertain to the issues before the Land Court. Accordingly, given the ongoing Land Court matter, your request does not comprise a public records request and the Town is not obligated to respond to same under the provisions of the Public Records Law. See *SPR 20/2307*, a copy of which is attached.

Without waiving the foregoing, please be advised that the Town’s duty to respond to records requests extends only to records that are in existence and in its custody, and the Town is under no obligation to create records in response to your request. See “A Guide to the Massachusetts Public Records Law,” March 2020, published by the Secretary of the Commonwealth, at page 40. Please

Mr. Jon Delli Priscoli
December 31, 2020
Page 2

note that nothing herein shall limit the Town's ability to assert applicable exemptions under state or federal law in the future. Moreover, if you choose to appeal this response and the Supervisor of Records disagrees and finds your correspondence to constitute five valid record requests, the Town reserves the right to supplement this response. The Town is authorized to charge for employee search and segregation time necessary to respond to your request, together with any redactions required by law. That time is charged at the hourly rate of the lowest paid person capable of compiling, segregating, redacting and reproducing responsive records, in accordance with 950 CMR 32.07(2)(i). Such hourly rate shall not exceed \$25/hour unless otherwise authorized by the Supervisor of Records. Please be advised that, if required to respond, the search for responsive records of Timothy J. Watson and Sandra Holland is estimated to require five hours at a rate of \$23.16 per hour, for a total fee of \$115.80. As stated above, however, it is the Town's position that your letters are not requests subject to the Public Records Law.

You may appeal this response to the Supervisor of Public Records pursuant to 950 CMR 32.08(1)(d). By law, the Supervisor is required to respond within 10 business days of receipt of your appeal. You may also seek judicial review of an unfavorable response by commencing a civil action in the superior court, under G.L. c. 66, §10A(c).

Very truly yours,



Brian W. Riley

BWR/
cc: Town Administrator
Town Clerk
744919/HOPD/0001

EXHIBIT 9



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

BOARD OF SELECTMEN

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

Town Administrator

Diana M. Schindler

Special Meeting
Board of Selectmen
January 8, 2021
9:45 am

RECEIVED

By Lisa M. Pedroli at 3:07 pm, Jan 05, 2021

Town of Hopedale is inviting you to a scheduled Zoom meeting.

Topic: Board of Selectmen Special Meeting
Time: Jan 8, 2021 09:45 AM Eastern Time (US and Canada)

Join Zoom Meeting

<https://us02web.zoom.us/j/85351267735?pwd=bjRXS3RkMFpta05WKzZXK1J6L3ZBQT09>

Meeting ID: 853 5126 7735

Passcode: 471874

One tap mobile

+16465588656,,85351267735#,,,,*471874# US (New York)

+13017158592,,85351267735#,,,,*471874# US (Washington D.C)

Call Meeting to Order in Open Session

This meeting is exclusively for the purpose of mediation and will be held virtually through REBA Dispute Resolution, Inc. The Board **will not** be returning to open session.

Move into Executive Session

Motion: G.L. c. 30A, § 21 with respect to participation in mediations, c. 30A, § 21(a): 9. To meet or confer with a mediator, as defined in section 23C of chapter 233, with respect to any litigation or decision on any public business within its jurisdiction involving another party, group or entity, provided that: (i) any decision to participate in mediation shall be made in an open session and the parties, issues involved and purpose of the mediation shall be disclosed; and (ii) no action shall be taken by any public body with respect to those issues which are the subject of the mediation without deliberation and approval for such action at an open session.

REBA Dispute Resolution Mediation: Town of Hopedale v. Priscoli, et al; Land Court Docket No. 20 MISC 000467 (DRR) LOMBARDI

Close Executive Session

Dissolve Meeting

EXHIBIT 10

**Special Meeting
Board of Selectmen
January 8, 2021
9:45 am**

Chair Keyes called the meeting to order 9:47AM

Pledge of Allegiance

Call Meeting to Order in Open Session

This meeting is exclusively for the purpose of mediation and will be held virtually through REBA Dispute Resolution, Inc. The Board **will not** be returning to open session.

Chair Keyes stated that the next open session Board of Selectmen meeting will take place on Tuesday, January 12, 2021 with a tentative update regarding mediation sessions and other topics. Selectman Arcudi suggested to try to limit the agenda for other business on Tuesday, January 12, 2021. Selectman Arcudi stated that the Tuesday agenda will be a full agenda as is and other business that is not time sensitive or critical can go on the following agenda.

Attorney Peter F. Durning stated to the residents regarding this executive session, that he and the Board of Selectmen are interested in having this dialogue and seeing what can be achieved. The Board of Selectmen are not going to vote to adopt a settlement agreement during this executive session. Any such decision will be made in open session.

Move into Executive Session

Motion: G.L. c. 30A, § 21 with respect to participation in mediations, c. 30A, § 21(a): 9. To meet or confer with a mediator, as defined in section 23C of chapter 233, with respect to any litigation or decision on any public business within its jurisdiction involving another party, group or entity, provided that: (i) any decision to participate in mediation shall be made in an open session and the parties, issues involved and purpose of the mediation shall be disclosed; and (ii) no action shall be taken by any public body with respect to those issues which are the subject of the mediation without deliberation and approval for such action at an open session.

REBA Dispute Resolution Mediation: Town of Hopedale v. Priscoli, et al; Land Court Docket No. 20 MISC 000467 (DRR) LOMBARDI

Selectman Arcudi made a motion to adjourn the open session and move to executive session. Selectman Hazard seconded the motion.

Arcudi – Aye, Hazard – Aye, Keyes – Aye

Close Executive Session

Dissolve Meeting

Chair Keyes dissolved the meeting at 10:03AM

EXHIBIT 11



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

BOARD OF SELECTMEN

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

Town Administrator

Diana M. Schindler

Board of Selectmen

January 12, 2021

7:00 pm

RECEIVED

By Lisa M. Pedroli at 11:07 am, Jan 08, 2021

Call to order via Zoom Meeting

Join Zoom Meeting

<https://us02web.zoom.us/j/88991654065?pwd=aTg0RnlBU0tWNzh1Z2lsWDlsVEFEZz09>

Meeting ID: 889 9165 4065

Passcode: 845319

Pledge of Allegiance

A. Consent Items

1. Approval of January 4, 2021 Regular Minutes
2. Rent Abatement for Month of December – Beyond Full
3. Hopedale Fire Department – Request to Waive (One Time Fee of \$5.00) Burning Permit Fee for 2021 Open Air Burning Season; Letter Attached

B. Appointments and Resignations

1. Appointment of Kevin Kokansky as a Full-Time Police Officer effective January 4, 2021
2. Resignation of Karla Hopkins from the Hopedale Finance Committee, effective January 7, 2021
3. Appointment of Becca Solomon as the Tree Warden, effective January 12, 2021

C. New Business*

1. License Agreement for Town Well Work

D. Old Business

1. COVID Updates
2. **Right of First Refusal, 364 West Street, Attorney Peter F. Durning, Special Counsel**

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

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

1. KP Law – Response to Public Records Request by John Deli Priscoli – December 31, 2020

G. Requests for Future Agenda Items:

1. Joint Meeting with Finance Committee, Tentative January 21, 2021, 7 pm
2. Complete Streets Public Hearing, January 25, 2021, 7:15 pm
3. Joint Meeting with Planning Board for Board Appointment, TBD

H. Administrator Updates (In Packet)

I. Executive Session

Motion: Motion: To move into Executive Session, pursuant to M.G.L. c.30A, § 21(a) for item # (3): To discuss strategy with respect to litigation that an open meeting may have a detrimental effect on the litigation position of the public body and the chair so declares. Roll Call Vote

Purpose: Litigation strategy re: Town v. Jon Delli Priscoli, Trustee, et als, Attorney Durning present.

**Please note the Board of Selectmen agenda may be subject to change and items not anticipated maybe discussed.*

Pursuant to Governor Baker's Order of March 12, 2020 suspending certain provisions of the Open Meeting Law (OML), G.L. c30A §18, and the Governor's Order of March 15, 2020 imposing limitations on the number of people that may gather in one place, this meeting of the Town of Hopedale Board of Selectmen will be conducted via remote participation.

If you wish to speak, please reserve comments until the Public Comment section of the meeting. If you are using video, you may either raise your hand to be acknowledged by the Chair or use the "Raise Your Hand" button. Please wait to speak until you are acknowledged by Chair. If participants cannot conduct themselves in accordance with these guidelines, they will be removed from meeting.

Also Streamed Live, click here: https://townhallstreams.com/towns/hopedale_ma

EXHIBIT 12

Board of Selectmen
January 12, 2021
7:00 pm

Call to order via Zoom Meeting

Chair Keyes called the meeting to order at 7:00PM

Pledge of Allegiance

Consent Items

Approval of January 4, 2021 Regular Minutes

Chair Keyes stated that he has read the minutes. Selectman Arcudi stated that he would like the Executive Assistant to edit a portion of the minutes prior to making a motion to approve the January 4, 2021 minutes. Regarding the COVID Update, he would like to modify the minutes to reflect that the restaurant has not been shut down or participating in take out only and has been open to customers. Selectman Hazard stated that before approving the January 4, 2021 meeting minutes, she would like to modify the portion of "Appointments and Resignations" to reflect that the Tree Warden position will be open to applicants within the week, not weeks.

Selectman Arcudi moved to approve the January 4, 2021 Regular Minutes, per the changes stated. Selectman Hazard seconded the motion.

Arcudi – Aye, Hazard – Aye, Keyes – Aye

Rent Abatement for Month of December – Beyond Full

Town Administrator stated that on December 15, 2020 the Hopedale Health Agent had spoken to members of Beyond Full and asked them to maintain take out service due to COVID restrictions and ventilation issues. The Town Administrator stated that she was not aware that Beyond Full had reopened to dine-in service. Selectman Arcudi stated that he had driven past the restaurant twice and there is a sign on the door notifying the public of indoor available seating. Town Administrator stated that she is working with the Building Commissioner to get the number of reduced occupancy that the restaurant would be permitted to have as indoor seating (COVID Restrictions – 25% occupancy, does not include staff). The Town Administrator stated that she has attempted to contact the Owner of Beyond Full, Richard Yancey, but has not been able too. Chair Keyes asked the Board what their thoughts are regarding allowing the restaurant to stay open for take-out only or should the restaurant remain closed? Town Administrator stated that her concerns are the ventilation in Town Hall. She made the Board and the public aware that Town Hall does have a blower system that pushes the air outside, but it is located directly under the upstairs offices windows. This is not a true ventilation system.

Selectman Arcudi asked if the restaurant is asking for rent abatement for December 2020 or January 2021, since it is already January 12, 2021. Town Administrator Schindler stated that the restaurant is asking for rent abatement for December 2020. Selectman Arcudi stated he would prefer to give rent abatement for the month of January 2021 and allow the restaurant to do take-out only. Selectman Hazard asked to what extent was the restaurant able to operate during the month of December 2020, was it take-out only or partial. Selectman Arcudi stated that he is not aware what their operation capacity was for the month of December 2020, however, once the Town Administrator speaks with the Owner the Board of Selectmen can revisit this question/item. Selectman Arcudi stated that his immediate issue is to create a safe environment for the Town Employees.

Selectman Arcudi made a motion to grant Beyond Full rent abatement for the month of January 2021, with the stipulation that they will only be able to do take-out only until the ventilation system issue is resolved. Selectman Hazard seconded the motion.

Arcudi – Aye, Hazard – Aye, Keyes – Aye

Hopedale Fire Department – Request to Waive (One Time Fee of \$5.00) Burning Permit Fee for 2021 Open Air Burning Season; Letter Attached

Chair Keyes read the letter provided by the Fire Chief regarding waiving the Burning Permit Fee for 2021. It is noted in the letter the revenue generated by the burning permit fees are \$600 annually. Chair Keyes stated that it is not a revenue issue it is a safety issue due to COVID. Chief Daige stated that to obtain the burning permit, residents need to come to the fire house, fill out the forms and pay in cash. The current COVID protocol discourages these interactions with the public. The Fire Chief stated that open air burning begins on January 15, 2021 to May 1, 2021. Residents will still be allowed to partake in open air burning but should call the fire department prior to. Chief Daige stated that hopefully by next year there will be an online permitting portal for residents to use.

Selectman Hazard made a motion to waive the burning fees for the 2021 season. Selectman Arcudi seconded the motion.

Hazard – Aye, Arcudi – Aye, Keyes – Aye

Appointments and Resignations

Appointment of Kevin Kokansky as a Full-Time Police Officer effective January 18, 2021 (Letter Attached).

Chair Keyes read the letter provided by Chief Giovanella. Chair Keyes congratulated Kevin Kokansky on being selected for this position.

Selectman Arcudi made a motion to appoint Kevin Kokansky as a Full-Time Police Officer effective January 18, 2021. Selectman Hazard seconded the motion.

Arcudi – Aye, Hazard – Aye, Keyes – Aye

Appointment of Zachary Perro as a Full-Time Officer to the Hopedale Police Department, effective February 15, 2021. (Letter Attached)

Chair Keyes read the letter provided by Chief Giovanella. Chair Keyes stated that Zachary is an excellent candidate and an asset to the Hopedale Police Department. Chief Giovanella stated that the Hopedale Police Department is very lucky to have him as an officer.

Selectman Hazard made a motion to appoint Zachary Perro as a Full-Time Police Officer effective February 15, 2021. Selectman Arcudi seconded the motion.

Hazard – Aye, Arcudi – Aye, Keyes – Aye

Resignation of Karla Hopkins from the Hopedale Finance Committee, effective January 7, 2021

Chair Keyes read the resignation letter provided by Karla Hopkins. Chair Keyes thanked Karla Hopkins for all of her years of service and dedication and that he looks forward to seeing her during the Town Meetings. Selectman Arcudi stated that Karla has been an asset to Hopedale and thanked her for her service. Selectman Hazard stated that Karla will be missed on the Committees. Town Administrator Schindler thanked Karla for all of her help with the budget and on the Finance Committee.

Selectman Arcudi made a motion to accept the resignation of Karla Hopkins from the Hopedale Capitol Planning Committee and Finance Committee effective January 7, 2021. Selectman Hazard seconded the motion.

Arcudi – Aye, Hazard – Aye, Keyes – Aye

Appointment of Becca Solomon as the Tree Warden, effective January 12, 2021

Chair Keyes read the email letter provided by Becca Solomon to the Town Administrator regarding the Tree Warden vacancy. Chair Keyes stated that he is very impressed with the level of course work and experience that Becca has. Town Administrator Schindler thanked Becca for stepping up in several roles in the Town. Town Administrator Schindler also thanked Walter Swift for offering to fill the Tree Warden position as well in Hopedale's time of need.

Selectman Arcudi made a motion to appoint Becca Solomon as the Hopedale Tree Warden, effective January 12, 2021. Selectman Hazard seconded the motion.

Arcudi – Aye, Hazard – Aye, Keyes – Aye

New Business*

License Agreement for Town Well Work

Town Administrator Schindler stated that the Water Sewer Commission is interested in storing some equipment on the Golf Course property. To limit the risk of the town and make this legitimate, the Town Administrator has drafted a license agreement. This agreement was reviewed and signed on Monday, Jan 11, 2021. This agreement stated that the Town can store an excavator and backhoe on the Golf Course property during the Water Sewer Commission's well exploration and the Water Sewer Commission can create an access road. Once completed the Water Sewer Commission will make sure there is no disturbance to the property.

Selectman Arcudi made a motion to approve the license agreement for the Town Well Work between the Town of Hopedale and the Hopedale Country Club. Selectman Hazard seconded the motion.

Arcudi – Aye, Hazard – Aye, Keyes – Aye

Old Business

COVID Updates

Town Administrator stated that the Governor extended the restrictions through the end of January 2021. Due to this, the Town will continue with the current guidelines. The vaccinations have begun to be given to first responders.

Right of First Refusal, 364 West Street, *Attorney Peter F. Durning, Special Counsel*

Attorney Peter F. Durning stated that as of now there is nothing to report back to the broader group. The mediation process is a confidential process by agreement of the parties and the mediation process is not yet concluded. He assured the residents that if/when there is something to be considered at a public meeting, it will be posted, and the Board will follow up on that.

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

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

KP Law – Response to Public Records Request by John Deli Priscoli – December 31, 2020

Requests for Future Agenda Items:

Joint Meeting with Finance Committee, Tentative January 21, 2021, 7 pm – Town Administrator Schindler confirmed that this meeting will take place on Thursday, January 21, 2021 at 7PM.

Complete Streets Public Hearing, January 25, 2021, 7:15 pm – Town Administrator Schindler confirmed this meeting will take place on Wednesday, January 25, 2021 at 7:15PM

Joint Meeting with Planning Board for Board Appointment, TBD – Town Administrator stated that there is a candidate for this position, appointing this candidate will require a joint meeting. The Town Administrator has not yet heard from the Chair of the Planning Board regarding confirming a joint meeting date. The joint meeting will also be an opportunity for the Planning Board to provide updates to the Board of Selectmen.

Water Commission Vacancy – Town Administrator Schindler stated that as candidates come in she will discuss with the Water Commission. Currently, there are no candidates for this position. This appointment will require a joint meeting with the Board of Selectmen.

Selectman Hazard asked to revisit the item on a future agenda regarding the name change from Board of Selectmen to the Select Board.

Administrator Updates (In Packet)

Chair Keyes opened the meeting up for resident inquires:

Mr. Fahey asked Selectman Arcudi what his position is on the proposed development on 364 West Street and if so, why? Attorney Durning intervened and stated to Selectman Arcudi that he does not feel he needs to answer that question at this time. Attorney Durning stated that there are some aspects of the matter that are sensitive. Attorney Durning stated that the Board is committed to conducting a full deliberation in a public session if/when there is a matter to pursue. Mr. Fahey asked Attorney Durning what the statement of full transparency means? Will this take place at the end of mediation or during it? When will the public be updated? Attorney Durning responded that during the process there is not much that can be provided as this is a confidential process. Attorney Durning reiterated that the Board has committed to come back to the public and deliberating during public session if one is warranted.

Liz Reilly asked when the next session for mediation will take place? Attorney Durning stated that they will need to report back to the Court on January 25, 2021. Attorney Durning specified that this date is for the Board to report back to the Land Court regarding the status of the process. Attorney Durning stated that they are in the mediation process and cannot provide any dates pertaining to when the next mediation meeting will be.

Linda Sarkisian asked the Board, how long does mediation typically last? Attorney Durning responded that he is going to refer to his response to Liz Reilly, there is a date by which they need to report back to the Land Court regarding the status. Otherwise, they are in the mediation process.

Executive Session

Motion: Motion: To move into Executive Session, pursuant to M.G.L. c.30A, § 21(a) for item # (3): To discuss strategy with respect to litigation that an open meeting may have a detrimental effect on the litigation position of the public body and the chair so declares. Roll Call Vote

Purpose: Litigation strategy re: Town v. Jon Delli Priscoli, Trustee, et als, Attorney Durning present

Present: Chair Keyes, Selectman Arcudi, Selectman Hazard, Town Administrator Schindler, Attorney Durning, Eric Kelly – Environmental Partners

Selectman Hazard made a motion to move into executive session. Selectman Arcudi seconded the motion.

Roll Call Hazard – Aye, Arcudi – Aye, Keyes – Aye

Chair Keyes dissolved the meeting at 7:53PM

EXHIBIT 13



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

BOARD OF SELECTMEN

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

Town Administrator

Diana M. Schindler

Board of Selectmen

January 12, 2021

7:00 pm

RECEIVED

By Lisa M. Pedroli at 11:07 am, Jan 08, 2021

Call to order via Zoom Meeting

Join Zoom Meeting

<https://us02web.zoom.us/j/88991654065?pwd=aTg0RnlBU0tWNzh1Z2lsWDlsVEFEZz09>

Meeting ID: 889 9165 4065

Passcode: 845319

Pledge of Allegiance

A. Consent Items

1. Approval of January 4, 2021 Regular Minutes
2. Rent Abatement for Month of December – Beyond Full
3. Hopedale Fire Department – Request to Waive (One Time Fee of \$5.00) Burning Permit Fee for 2021 Open Air Burning Season; Letter Attached

B. Appointments and Resignations

1. Appointment of Kevin Kokansky as a Full-Time Police Officer effective January 4, 2021
2. Resignation of Karla Hopkins from the Hopedale Finance Committee, effective January 7, 2021
3. Appointment of Becca Solomon as the Tree Warden, effective January 12, 2021

C. New Business*

1. License Agreement for Town Well Work

D. Old Business

1. COVID Updates
2. **Right of First Refusal, 364 West Street, Attorney Peter F. Durning, Special Counsel**

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

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

1. KP Law – Response to Public Records Request by John Deli Priscoli – December 31, 2020

G. Requests for Future Agenda Items:

1. Joint Meeting with Finance Committee, Tentative January 21, 2021, 7 pm
2. Complete Streets Public Hearing, January 25, 2021, 7:15 pm
3. Joint Meeting with Planning Board for Board Appointment, TBD

H. Administrator Updates (In Packet)

I. Executive Session

Motion: Motion: To move into Executive Session, pursuant to M.G.L. c.30A, § 21(a) for item # (3): To discuss strategy with respect to litigation that an open meeting may have a detrimental effect on the litigation position of the public body and the chair so declares. Roll Call Vote

Purpose: Litigation strategy re: Town v. Jon Delli Priscoli, Trustee, et als, Attorney Durning present.

**Please note the Board of Selectmen agenda may be subject to change and items not anticipated maybe discussed.*

Pursuant to Governor Baker's Order of March 12, 2020 suspending certain provisions of the Open Meeting Law (OML), G.L. c30A §18, and the Governor's Order of March 15, 2020 imposing limitations on the number of people that may gather in one place, this meeting of the Town of Hopedale Board of Selectmen will be conducted via remote participation.

If you wish to speak, please reserve comments until the Public Comment section of the meeting. If you are using video, you may either raise your hand to be acknowledged by the Chair or use the "Raise Your Hand" button. Please wait to speak until you are acknowledged by Chair. If participants cannot conduct themselves in accordance with these guidelines, they will be removed from meeting.

Also Streamed Live, click here: https://townhallstreams.com/towns/hopedale_ma

EXHIBIT 14

Board of Selectmen
January 12, 2021
7:00 pm

Call to order via Zoom Meeting

Chair Keyes called the meeting to order at 7:00PM

Pledge of Allegiance

Consent Items

Approval of January 4, 2021 Regular Minutes

Chair Keyes stated that he has read the minutes. Selectman Arcudi stated that he would like the Executive Assistant to edit a portion of the minutes prior to making a motion to approve the January 4, 2021 minutes. Regarding the COVID Update, he would like to modify the minutes to reflect that the restaurant has not been shut down or participating in take out only and has been open to customers. Selectman Hazard stated that before approving the January 4, 2021 meeting minutes, she would like to modify the portion of "Appointments and Resignations" to reflect that the Tree Warden position will be open to applicants within the week, not weeks.

Selectman Arcudi moved to approve the January 4, 2021 Regular Minutes, per the changes stated. Selectman Hazard seconded the motion.

Arcudi – Aye, Hazard – Aye, Keyes – Aye

Rent Abatement for Month of December – Beyond Full

Town Administrator stated that on December 15, 2020 the Hopedale Health Agent had spoken to members of Beyond Full and asked them to maintain take out service due to COVID restrictions and ventilation issues. The Town Administrator stated that she was not aware that Beyond Full had reopened to dine-in service. Selectman Arcudi stated that he had driven past the restaurant twice and there is a sign on the door notifying the public of indoor available seating. Town Administrator stated that she is working with the Building Commissioner to get the number of reduced occupancy that the restaurant would be permitted to have as indoor seating (COVID Restrictions – 25% occupancy, does not include staff). The Town Administrator stated that she has attempted to contact the Owner of Beyond Full, Richard Yancey, but has not been able too. Chair Keyes asked the Board what their thoughts are regarding allowing the restaurant to stay open for take-out only or should the restaurant remain closed? Town Administrator stated that her concerns are the ventilation in Town Hall. She made the Board and the public aware that Town Hall does have a blower system that pushes the air outside, but it is located directly under the upstairs offices windows. This is not a true ventilation system.

Selectman Arcudi asked if the restaurant is asking for rent abatement for December 2020 or January 2021, since it is already January 12, 2021. Town Administrator Schindler stated that the restaurant is asking for rent abatement for December 2020. Selectman Arcudi stated he would prefer to give rent abatement for the month of January 2021 and allow the restaurant to do take-out only. Selectman Hazard asked to what extent was the restaurant able to operate during the month of December 2020, was it take-out only or partial. Selectman Arcudi stated that he is not aware what their operation capacity was for the month of December 2020, however, once the Town Administrator speaks with the Owner the Board of Selectmen can revisit this question/item. Selectman Arcudi stated that his immediate issue is to create a safe environment for the Town Employees.

Selectman Arcudi made a motion to grant Beyond Full rent abatement for the month of January 2021, with the stipulation that they will only be able to do take-out only until the ventilation system issue is resolved. Selectman Hazard seconded the motion.

Arcudi – Aye, Hazard – Aye, Keyes – Aye

Hopedale Fire Department – Request to Waive (One Time Fee of \$5.00) Burning Permit Fee for 2021 Open Air Burning Season; Letter Attached

Chair Keyes read the letter provided by the Fire Chief regarding waiving the Burning Permit Fee for 2021. It is noted in the letter the revenue generated by the burning permit fees are \$600 annually. Chair Keyes stated that it is not a revenue issue it is a safety issue due to COVID. Chief Daige stated that to obtain the burning permit, residents need to come to the fire house, fill out the forms and pay in cash. The current COVID protocol discourages these interactions with the public. The Fire Chief stated that open air burning begins on January 15, 2021 to May 1, 2021. Residents will still be allowed to partake in open air burning but should call the fire department prior to. Chief Daige stated that hopefully by next year there will be an online permitting portal for residents to use.

Selectman Hazard made a motion to waive the burning fees for the 2021 season. Selectman Arcudi seconded the motion.

Hazard – Aye, Arcudi – Aye, Keyes – Aye

Appointments and Resignations

Appointment of Kevin Kokansky as a Full-Time Police Officer effective January 18, 2021 (Letter Attached).

Chair Keyes read the letter provided by Chief Giovanella. Chair Keyes congratulated Kevin Kokansky on being selected for this position.

Selectman Arcudi made a motion to appoint Kevin Kokansky as a Full-Time Police Officer effective January 18, 2021. Selectman Hazard seconded the motion.

Arcudi – Aye, Hazard – Aye, Keyes – Aye

Appointment of Zachary Perro as a Full-Time Officer to the Hopedale Police Department, effective February 15, 2021. (Letter Attached)

Chair Keyes read the letter provided by Chief Giovanella. Chair Keyes stated that Zachary is an excellent candidate and an asset to the Hopedale Police Department. Chief Giovanella stated that the Hopedale Police Department is very lucky to have him as an officer.

Selectman Hazard made a motion to appoint Zachary Perro as a Full-Time Police Officer effective February 15, 2021. Selectman Arcudi seconded the motion.

Hazard – Aye, Arcudi – Aye, Keyes – Aye

Resignation of Karla Hopkins from the Hopedale Finance Committee, effective January 7, 2021

Chair Keyes read the resignation letter provided by Karla Hopkins. Chair Keyes thanked Karla Hopkins for all of her years of service and dedication and that he looks forward to seeing her during the Town Meetings. Selectman Arcudi stated that Karla has been an asset to Hopedale and thanked her for her service. Selectman Hazard stated that Karla will be missed on the Committees. Town Administrator Schindler thanked Karla for all of her help with the budget and on the Finance Committee.

Selectman Arcudi made a motion to accept the resignation of Karla Hopkins from the Hopedale Capitol Planning Committee and Finance Committee effective January 7, 2021. Selectman Hazard seconded the motion.

Arcudi – Aye, Hazard – Aye, Keyes – Aye

Appointment of Becca Solomon as the Tree Warden, effective January 12, 2021

Chair Keyes read the email letter provided by Becca Solomon to the Town Administrator regarding the Tree Warden vacancy. Chair Keyes stated that he is very impressed with the level of course work and experience that Becca has. Town Administrator Schindler thanked Becca for stepping up in several roles in the Town. Town Administrator Schindler also thanked Walter Swift for offering to fill the Tree Warden position as well in Hopedale's time of need.

Selectman Arcudi made a motion to appoint Becca Solomon as the Hopedale Tree Warden, effective January 12, 2021. Selectman Hazard seconded the motion.

Arcudi – Aye, Hazard – Aye, Keyes – Aye

New Business*

License Agreement for Town Well Work

Town Administrator Schindler stated that the Water Sewer Commission is interested in storing some equipment on the Golf Course property. To limit the risk of the town and make this legitimate, the Town Administrator has drafted a license agreement. This agreement was reviewed and signed on Monday, Jan 11, 2021. This agreement stated that the Town can store an excavator and backhoe on the Golf Course property during the Water Sewer Commission's well exploration and the Water Sewer Commission can create an access road. Once completed the Water Sewer Commission will make sure there is no disturbance to the property.

Selectman Arcudi made a motion to approve the license agreement for the Town Well Work between the Town of Hopedale and the Hopedale Country Club. Selectman Hazard seconded the motion.

Arcudi – Aye, Hazard – Aye, Keyes – Aye

Old Business

COVID Updates

Town Administrator stated that the Governor extended the restrictions through the end of January 2021. Due to this, the Town will continue with the current guidelines. The vaccinations have begun to be given to first responders.

Right of First Refusal, 364 West Street, *Attorney Peter F. Durning, Special Counsel*

Attorney Peter F. Durning stated that as of now there is nothing to report back to the broader group. The mediation process is a confidential process by agreement of the parties and the mediation process is not yet concluded. He assured the residents that if/when there is something to be considered at a public meeting, it will be posted, and the Board will follow up on that.

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

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

KP Law – Response to Public Records Request by John Deli Priscoli – December 31, 2020

Requests for Future Agenda Items:

Joint Meeting with Finance Committee, Tentative January 21, 2021, 7 pm – Town Administrator Schindler confirmed that this meeting will take place on Thursday, January 21, 2021 at 7PM.

Complete Streets Public Hearing, January 25, 2021, 7:15 pm – Town Administrator Schindler confirmed this meeting will take place on Wednesday, January 25, 2021 at 7:15PM

Joint Meeting with Planning Board for Board Appointment, TBD – Town Administrator stated that there is a candidate for this position, appointing this candidate will require a joint meeting. The Town Administrator has not yet heard from the Chair of the Planning Board regarding confirming a joint meeting date. The joint meeting will also be an opportunity for the Planning Board to provide updates to the Board of Selectmen.

Water Commission Vacancy – Town Administrator Schindler stated that as candidates come in she will discuss with the Water Commission. Currently, there are no candidates for this position. This appointment will require a joint meeting with the Board of Selectmen.

Selectman Hazard asked to revisit the item on a future agenda regarding the name change from Board of Selectmen to the Select Board.

Administrator Updates (In Packet)

Chair Keyes opened the meeting up for resident inquires:

Mr. Fahey asked Selectman Arcudi what his position is on the proposed development on 364 West Street and if so, why? Attorney Durning intervened and stated to Selectman Arcudi that he does not feel he needs to answer that question at this time. Attorney Durning stated that there are some aspects of the matter that are sensitive. Attorney Durning stated that the Board is committed to conducting a full deliberation in a public session if/when there is a matter to pursue. Mr. Fahey asked Attorney Durning what the statement of full transparency means? Will this take place at the end of mediation or during it? When will the public be updated? Attorney Durning responded that during the process there is not much that can be provided as this is a confidential process. Attorney Durning reiterated that the Board has committed to come back to the public and deliberating during public session if one is warranted.

Liz Reilly asked when the next session for mediation will take place? Attorney Durning stated that they will need to report back to the Court on January 25, 2021. Attorney Durning specified that this date is for the Board to report back to the Land Court regarding the status of the process. Attorney Durning stated that they are in the mediation process and cannot provide any dates pertaining to when the next mediation meeting will be.

Linda Sarkisian asked the Board, how long does mediation typically last? Attorney Durning responded that he is going to refer to his response to Liz Reilly, there is a date by which they need to report back to the Land Court regarding the status. Otherwise, they are in the mediation process.

Executive Session

Motion: Motion: To move into Executive Session, pursuant to M.G.L. c.30A, § 21(a) for item # (3): To discuss strategy with respect to litigation that an open meeting may have a detrimental effect on the litigation position of the public body and the chair so declares. Roll Call Vote

Purpose: Litigation strategy re: Town v. Jon Delli Priscoli, Trustee, et als, Attorney Durning present

Present: Chair Keyes, Selectman Arcudi, Selectman Hazard, Town Administrator Schindler, Attorney Durning, Eric Kelly – Environmental Partners

Selectman Hazard made a motion to move into executive session. Selectman Arcudi seconded the motion.

Roll Call Hazard – Aye, Arcudi – Aye, Keyes – Aye

Chair Keyes dissolved the meeting at 7:53PM

EXHIBIT 15



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

BOARD OF SELECTMEN

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

Town Administrator

Diana M. Schindler

**Board of Selectmen
January 25, 2021
7:00 PM**

RECEIVED

By Lisa M. Pedroli at 3:59 pm, Jan 21, 2021

Call to order 7:00 p.m. via Zoom Meeting

Join Zoom Meeting

<https://us02web.zoom.us/j/82610249354?pwd=SXFmdW5jN1N4NDFlQjRlT0l0QnRMZz09>

Meeting ID: 826 1024 9354

Passcode: 983963

Please note: Zoom capacity for this meeting is 100 people. If you would like to view meeting, but do not intend to participate, please tune into town hall streams (information at bottom of agenda).

Pledge of Allegiance

A. Consent Items

1. Per M.G.L. Chapter 44, §53E; Accept Donation for 364 West Street Legal Fees in the amount of **\$76,348.54** from Anonymous Donor

B. Appointments and Resignations

1. Resignation of Richard Bekerian from the Hopedale Police Department, effective January 29, 2021. (Letter Attached)
2. Reappointment of Carole Mullen to the MWRTA Advisory Board for the Town of Hopedale. (Letter Attached)

C. Public Hearing

7:15 p.m. Complete Streets Policy

To hear public comments and receive input on Draft Hopedale Complete Streets Policy

D. New Business*

7:45 p.m. Joint Meeting per M.G.L. Chapter 41, §11, with remaining Planning Board members, to consider Appointment of Kaplan Hasanoglu

E. Old Business

1. COVID Updates
2. **Mediation Updates; Attorney Peter F. Durning, Special Counsel**
Future GU RR Development; Michael R. Milanoski, President, Grafton and Upton Railroad Company
Deliberate & Vote Mediation Agreement regarding 364 West Street & 363 West Street ADJ

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

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

Master Plan Steering Committee –_The Master Plan Steering Committee would like to invite you to the Vision Workshop! With your assistance in this workshop, you will be able to help us create our Vision Statement that will shape the plan’s, goals and recommendations for Hopedale. The workshop will take place via Zoom on January 31, 2021 from 2PM-4PM. To RSVP for the workshop and to receive the Zoom details, visit <https://www.envisionhopedale.com>. The Master Plan Steering Committee would like to thank all of those who participated in the envisionHopedale survey. We received nearly 500 responses! Your responses will help pave the way for the Master Plan. The results of the survey will soon be available at [envisionhopedale.com](https://www.envisionhopedale.com).

H. Requests for Future Agenda Items:

I. Administrator Updates (In Packet)

J. Executive Session: None

**Please note the Board of Selectmen agenda may be subject to change and items not anticipated maybe discussed.*

Pursuant to Governor Baker’s Order of March 12, 2020 suspending certain provisions of the Open Meeting Law (OML), G.L. c30A §18, and the Governor’s Order of March 15, 2020 imposing limitations on the number of people that may gather in one place, this meeting of the Town of Hopedale Board of Selectmen will be conducted via remote participation.

If you wish to speak, please reserve comments until the Public Comment section of the meeting. If you are using video, you may either raise your hand to be acknowledged by the Chair or use the “Raise Your Hand” button. Please wait to speak until you are acknowledged by Chair. If participants cannot conduct themselves in accordance with these guidelines, they will be removed from meeting.

Also Streamed Live, click here: https://townhallstreams.com/towns/hopedale_ma

EXHIBIT 16

Board of Selectmen
January 25, 2021
Regular Minutes

Chair Keyes called the meeting to order at 7:00PM

Pledge of Allegiance

Consent Items

Per M.G.L. Chapter 44, §53E; Accept Donation for 364 West Street Legal Fees in the amount of \$76,348.54 from Anonymous Donor

The Board of Selectmen thanked the Anonymous Donor for the generous donation.

Selectman Arcudi made a motion to accept the donation of \$76,348.54 for 364 West Street Legal Fees. Selectman Hazard seconded the motion.

Arcudi – Aye, Hazard – Aye, Keyes – Aye

Appointments and Resignations

Resignation of Richard Bekerian from the Hopedale Police Department, effective January 29, 2021. (Letter Attached)

Chair Keyes read the letter provided by Richard Bekerian. Chair Keyes thanked Richard for his time and hard work with the Hopedale Police Department and stated that this is a big loss for Hopedale. Police Chief Giovanella also thanked Richard for his time with the Police Department. Chief Giovanella stated that with this loss the Police Department will be understaffed within 4-5 months, even with recently appointed employees.

Selectman Hazard moved to accept the resignation of Richard Bekerian from the Hopedale Police Department, effective January 29, 2021. Selectman Arcudi seconded the motion.

Hazard – Aye, Arcudi – Aye, Keyes – Aye

Reappointment of Carole Mullen to the MWRTA Advisory Board for the Town of Hopedale. (Letter Attached)

Chair Keyes read the letter provided by Carole Mullen. The Board of Selectman thanked Carole for her hard work and involvement.

Selectman Arcudi made a motion to reappoint Carole Mullen to the MWRTA Advisory Board for the Town of Hopedale. Selectman Hazard seconded the motion.

Arcudi – Aye, Hazard – Aye, Keyes – Aye

Public Hearing

7:15 p.m. Complete Streets Policy

To hear public comments and receive input on Draft Hopedale Complete Streets Policy

Selectman Arcudi made a motion to open the public meeting at 7:18PM on the Complete Streets Policy.

Selectman Hazard seconded the motion.

Arcudi – Aye, Hazard – Aye, Keyes – Aye

Present: Eli Road Commissioner. Town Administrator began the discussion regarding the Complete Streets Policy. Town Administrator explained the Complete Street Policy that the Board of Selectmen will be reviewing at tonight's meeting. Town Administrator Schindler stated that most of the policy will be guided by the Road Commissioners because it is a road and streets policy primarily although this policy is not automobile centric (sidewalks, bike pathways, etc). The Town would also incorporate other decision makers in the policy such as the Schools, COA, the ADA Coordinator, the Parks Committee, or the Board of Selectmen.

Road Commissioner Eli LAST NAME asked Town Administrator Schindler that if the Road Commissioner's currently have projects open or had upcoming projects for the next year, that are going to be funded by Chapter 90 funds but if the funding from Chapter 90 runs out, would the Complete Streets Policy cover the funding that is needed? Town Administrator Schindler stated that we can augment the Chapter 90 funds with the Complete Streets Policy funds if it fits the criteria of Policy. How quickly the Complete Street funds are available is unknown.

Selectman Arcudi asked if we are adopting this Policy late and does that effect the Towns chances of being awarded funding? Town Administrator Schindler responded that over 200 MA communities have adopted the policy. The program is competitive, getting certified and obtaining the technical assistance funding is not competitive. The construction grants however, are competitive. Town Administrator Schindler clarified that this Policy is for public ways, not private ways.

Selectman Arcudi asked if a developer comes to Hopedale, would we enforce this Policy and make sure the developer is following the DOT guidelines? Road Commissioner Eli LAST NAME stated that Hopedale is currently enforcing DOT guidelines. However, with the policy in place, stricter guidelines may be enforced.

Selectman Arcudi stated that he wants to be sure that we will not be hindering development of Hopedale because of this policy and the infrastructure of the Town, he stated that some areas do not have the space for three lanes or bike paths. Town Administrator Schindler responded that there are exemptions included in the Policy that confirm that the Town/Developers will not be forced to do/add something if the costs are going to be disproportionate to the need or use.

Chair Keyes open the discussion for public comments.

A resident asked what the process is for notifying the town if there is a problem with the sidewalks and with the new policy, how to handle it? Town Administrator stated that the notification process remains the same, call the Highway Department. Town Administrator responded to the resident and stated that once this Policy is adopted, we want to get as much information as we can so we can add this information to the prioritization plan.

Selectman Hazard moved to close the Complete Street Public Hearing. Selectman Arcudi seconded the motion.

Hazard – Aye, Arcudi – Aye, Keyes – Aye

Selectman Hazard moved to adopt the Complete Streets Policy as presented. Selectman Arcudi seconded the motion.

Hazard – Aye, Arcudi – Aye, Keyes – Aye

The Public Hearing dissolved at 7:35PM

New Business*

7:45 p.m. Joint Meeting per M.G.L. Chapter 41, § 11, with remaining Planning Board members, to consider Appointment of Kaplan Hasanoglu

Stephen Chaplin, member of the Planning Board, called the joint meeting to order at 7:46PM.

Stephen Chaplin thanked Kaplan Hasanoglu for his interested in the Hopedale Planning Board and stated that he will bring a lot to the Board. The Board of Selectmen expressed their enthusiasm regarding Kaplan being accepted as a member to the Planning Board.

Eli Leino made a motion to accept Kaplan Hasanoglu as a member to the Planning Board. Steven Gallagher seconded the motion.

Chaplin – Aye, Leino – Aye, Gallagher – Aye, Hazard – Aye, Arcudi – Aye, Keyes – Aye

Eli Leino made a motion to adjourn the meeting of the Planning Board. Steven Gallagher seconded the motion.

Leino – Aye, Gallagher – Aye, Chaplin – Aye

Old Business

COVID Updates

Town Administrator Schindler stated that the Governor is easing on restrictions. Beyond Full, the restaurant located in the Town Hall, will be permitted to open for in house dining beginning on February 1, 2021. There will be a limited number of patrons allowed, and masks must be worn when not consuming food/beverage. Town Administrator Schindler stated that the is working with Hopedale Health Agent, Bill Fisher, to ensure that the Town Hall has good cleaning and disinfecting of all shared facilities. Town Administrator Schindler stated that at the next Department Heads meeting, they will be discussing opening the Town Hall for limited regular hours to the public. Currently, residents must make an appointment to come into the Town Hall.

Mediation Updates; *Attorney Peter F. Durning, Special Counsel*

Attorney Durning shared his screen with the Board and the Residents providing a presentation regarding 364 West Street. Attorney Durning stated that he hopes this presentation will provide sufficient details and information primarily so that the Board can make an informed decision following the public comment period at this meeting.

Attorney Durning reviewed the events throughout the litigation and mediation process through his presentation. Attorney Durning stated that the factored that favored a negotiation solution were that the Land Court denied our motion for preliminary injunction and prevailing at the Land Court on G.L. c. 61 does not give Hopedale the ability to develop a public water supply. Attorney Durning stated that the core principals guiding the negotiation solution were protecting the Mill River watershed which is hydrologically connected to the Town's current water supply, securing opportunities for the exploration and development of new public water supply sources, owning or controlling the greatest amount of the forest land possible and preserving it as conservation land, and obtaining concessions for GU RR that would promote local control and/or the application of state and local rues and regulations on railroad parcels to the greatest extent possible to promote protection of the watershed and to preserve the ability to develop future water supply. Attorney Durning stated that it is important to point out again, regarding the last point, the Interstate Commerce Commission Termination Act (ICCTA) grants railroads significant protection under Federal Law. Whereby, railroads generally do not have to abide by State and local regulations. For example, railroads generally do not have to abide by the Massachusetts State Wetlands Protection Act. If the Town were able to secure adherence to State and Local regulations by the railroad through a private settlement agreement that would give Hopedale greater influence and control on the outcomes of how this land was developed, compared to if the Town went to Court, lost the action and the railroad had free reign to develop these parcels.

Based on the current negotiations, the Town would own outright parcels A and D, these parcels would be deeded to the Town subject to the non-build easement granted under the auspices of the Army Corps of Engineers. They would be accepted by the Town as conservation land consistent with the warrant at Special Town Meeting. Parcels A and D would give the Town control of the full Mill River Corridor. The railroad would own parcels B, C and E.

There are two potential types of water supply on the 364 West Street property, potential bed rock wells base on fracture trace or a well or well field from groundwater in the shallow BLANK. A fracture trace study was performed that shows the confluence of certain ground features that indicate there is a strong likelihood that there would be bedrock fractures below those points that could be explored and exploited for public water supply. Also, a well or well field from ground water is possible, given the soil characteristics and general knowledge of the aquifer associated with the Mill River in this area. These are the two areas the Town was trying to secure to make sure we can get to the public water supply. Attorney Durning noted that the GU RR will need water for their development on their parcels, in this agreement the GU RR is willing to enter a cost sharing agreement with Hopedale that will assist and offset the costs of the exploration for water supply wells.

In addition to the cost sharing agreement, the GU RR is willing to make some additional agreements. Such as, agreeing to impose a no build area (300 X 1000 easement area) located on parcel E. There would be no development on that portion of the parcel for five years. For this agreement, Hopedale would create an easement to allow GU RR to use the eastern most portion of parcel A to do wetlands replication work if some of their work offsets existing wetlands on their parcels. Attorney Durning opened the discussion for Michael Milanowski, President of the GU RR, to

Michael Milanowski, President of GU RR spoke and presented a power point regarding the negotiation expectations for the land at 364 West Street mediation. Milanowski discussed that the railroad and the Town's focus has been regarding protecting future bedrock well location and preserving the current water supply, but the Town needs the GU RR's support. GU RR is trying to work with the Town to work out an agreement to build a municipal well, secure recharge areas, and maintain working safely. Michael Milanowski discussed the resolution that came to fruition regarding the PPP with the Town at a 1 or a 1.5 or greater land swap, since the W Commission did not support this concept the GU RR agreed to negotiate and came to a resolution that now includes sale of land to Town including non-61 (25 acres) parcel. Milanowski continued to discuss the land transfer by One Hundred Realty Trust, explaining what will become and what was negotiated regarding parcels A, B, C, D listed on his power point presentation.

Attorney Peter Durning continued with his presentation. Durning discussed the deed restrictions that the GU RR has agreement to. GU RR has agreed to be bound by certain aspects of the Town of Hopedale's Ground Water Protection Supply bylaw to be applied to parcels B and C. In summary, the railroad has agreed to earth removal requirements, limitations of application and storage pesticides, herbicides, insecticides, fungicides, and rodenticides, limitation on fertilizers, groundwater recharge and groundwater quality, preparation of a hazardous materials management plan. The GU RR has agreed to additional deed restrictions on parcels B and C not included in the Towns bylaw, such as, development will be limited to enclosed buildings or structures so as to avoid outside storage, Owner will keep state and local authorities apprised of any development plan by providing notification to the Board of Selectmen and/or Town Administrator, GU RR provides for enforceability of these provisions though an action to a court of competent jurisdiction, including but not limited to the Massachusetts Superior Court and the Land Court as well as a Roadway provision deed restriction.

Attorney Durning stated that they have negotiated a preliminary agreement with the railroad that will need to be formalized and adopted by the Board of Selectmen if that is the decision of the Selectmen today. The GU RR was informed that the finalized negotiation, if the Board so authorize, to be completed by February 9, 2021. We anticipate that pursuant to that agreement, there will be a conveyance of land from the GU RR to the Town of Hopedale that would take place at a formal closing approximately 60 days after the conclusion of the formal agreement. Pursuant to the terms of the tentative agreement, GU RR is going to donate parcel D, the 363 West adjacent parcel. The Town of Hopedale will be obligated to purchase the additional lands that it is getting from parcel A. The negotiated purchase price is \$587,500. The parties are agreeing to split the cost of a formal land survey, to establish the new boundaries on the parcels.

Attorney Durning stated that he endorses this settlement package, the negotiated solution meets the Town of Hopedale's objectives, it dedicates more land for conservation, preserves the aesthetic experience of the parklands, secures watershed protection for the Mill River Watershed, it provides opportunities for public water supply development from the bedrock wells or ground water resources, promotes commercial development in an area that the Town has its own industrial area. Attorney Durning closed his discussion and presentation.

Eric Kelly with Environmental Partners stated that the negotiations support locating potential water supply and protecting the water shed.

Future GU RR Development; *Michael R. Milanoski, President, Grafton and Upton Railroad Company*
Deliberate & Vote Mediation Agreement regarding 364 West Street & 363 West Street ADJ

Selectman Arcudi made a motion to deliberate and vote to accept the negotiated mediation agreement regarding 364 West St and 364 West St adjacent. Selectman Keyes seconded the motion.

Selectman Arcudi stated that his goal was to get the best option for the Town and the residents. Selectman Arcudi feels that with this negotiation the Selectman were able to accomplish that goal by protecting the current watershed and having the ability for future water expansion. The Town also can extend expansion of our parklands. Selectman Arcudi thanked Attorney Peter Durning, Selectman Hazard and Chair Keyes for their time during the process.

Selectman Hazard began a discussion regarding the mediation/negotiation agreement. Selectman Hazard stated that she feels that the railroad has done a disservice to the Town regarding Chapter 61 land. She feels that the negotiation agreement being discussed is vastly different than what the residents voted at Town Meeting and that the decision made tonight should be what the residents desire. Selectman Hazard stated that she is anticipating that, per the feedback from the public at tonight's meeting, and if the Town is not able to hold another Town Meeting, she will likely be voting not in favor to the vote taking place tonight.

Chair Keyes state that the Board of Selectmen's goal if they were not able to get all the land regarding this topic are water shed protection, water supply exploration and protection and obtaining as much of the land as possible. Chair Keyes opened the meeting for public discussion and questions.

Hopedale resident, Jim Donohoe asked if there is a deadline or reason as to if/why the Board of Selectmen need to decide tonight? Attorney During responded that the agreement that the GU RR has put forward, coming out of the mediation, needs to be consummated. The Town made a commitment in entering the mediation agreement. The Board of Selectmen modified the form of the mediation agreement to expressly say that the Board of Selectmen would not be bound by any terms of the agreement until it had the opportunity to conduct public hearing. During mediation, this date was specified as the date of the public hearing.

Hopedale resident and Water Sewer Commission, Ed Burt commented that what was stated at tonight's meeting highlights the core principals of the residents and Town's concerns and goals. He thanked the residents involved in this process. Burt asked is there is a way to extend the five-year limitation regarding building. Attorney Durning stated that the anticipation is that a well is viable and that it would not be under development while Mass DEP might be reviewing new approval. The negotiations state that the five-year limit is firm, while the town can advance its water exploration. The exploration for water supply is aligned between the Town and GU RR, hence the cost sharing agreement. Some residents shared concerns regarding the five-year limit exploration limit for a well. Eric, with Environmental Partners, stated that the timeline is going to be driven by the science. Yes, regarding public supply wells, the exploratory phase can be completed in shorter time frames. What extends the time frame is the connection of a water source, treatment necessary and the infrastructure that supports it. Selectman Hazard asked Attorney Durning if the agreement states that the well will need to be completed in five years or does the Town have five years to determine if the well is viable (exploratory phase)? Attorney Durning responded that the GU RR agrees to not construct any buildings on the 300ftX1,000ft rectangular area for a period of five years or until the Town identifies a financial/feasible public drinking water well supply area on that land.

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

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

Town Administrator Schindler asked Chair Keyes to move this item to after Appointments and Resignations at 7:11 PM. Chair Keyes agreed, no vote is required to move item.

Master Plan Steering Committee – The Master Plan Steering Committee would like to invite you to the Vision Workshop! With your assistance in this workshop, you will be able to help us create our Vision Statement that will shape the plan's, goals and recommendations for Hopedale. The workshop will take place via Zoom on January 31, 2021 from 2PM-4PM. To RSVP for the workshop and to receive the Zoom details, visit <https://www.envisionhopedale.com>. The Master Plan Steering Committee would like to thank all of those who participated in the envisionHopedale survey. We received nearly 500 responses! Your responses will help pave the way for the Master Plan. The results of the survey will soon be available at [envisionhopedale.com](https://www.envisionhopedale.com).

Jim Abbruzzese, Chair of the Master Plan Steering Committee, discussed the Visio Workshop, via Zoom that is available for residents and non-residents to partake in. During this workshop the Master Plan Steering Committee will ask participants questions such as, what drew them to Hopedale, what keeps them in Hopedale and what they wish to see in Hopedale in the future. The Master Plan will be a guiding document for Departments on the future of the Town. This is also an excellent way for the voice of the people to be heard regarding what community goals are for the Town development.

Requests for Future Agenda Items:

Administrator Updates (In Packet)

Executive Session: None

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

Arcudi – Aye, Hazard – Aye, Keyes – Aye

Chair Keyes dissolved the meeting at 12:05PM

Submitted by:

Lindsay Mercier
Lindsay Mercier, Executive Assistant

Adopted: _____

EXHIBIT 17



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

BOARD OF SELECTMEN
Brian R. Keyes, Chair
Louis J. Arcudi, III
Glenda Hazard
Town Administrator
Diana M. Schindler

Board of Selectmen
February 8, 2021
7:00 PM

REVISED

10:25 am, Feb 08, 2021

Call to order 7:00 p.m. via Zoom Meeting

Join Zoom Meeting

<https://us02web.zoom.us/j/88333792080?pwd=ZTRiQkVycEpQR2pFcXRYSXE5L0ZwUT09>

Meeting ID: 883 3379 2080

Passcode: 704668

Please note: Zoom capacity for this meeting is 100 people. If you would like to view meeting, but do not intend to participate, please tune into town hall streams (information at bottom of agenda).

Pledge of Allegiance

A. Consent Items

1. Accepting the Donation of \$200 to the Bancroft Memorial Library from Frederick G. Oldfield, III, Chair of the Bancroft Memorial Library Trustees, in memory of his Grandmother, Marjorie Hattersley (Letter Attached)

B. Appointments and Resignations

1. **7:15 p.m.** Joint Meeting per M.G.L. Chapter 41, §11, with remaining Water Commission members, to consider Appointment of Donald Cooper (No posted meeting for W/S – review letter received)
2. Appointment of Melissa Butler to the Master Plan Steering Committee (Talent Bank Form Attached)
3. Appointment of Kaplan Hasanoglu to the Master Plan Steering Committee

C. Public Hearing None

D. New Business*

1. Approve MOU with CMRPC for implementation of EEA grant in the amount of \$32,500 (TA to sign) (vote)
2. Collective Bargaining Assignments –
Selectman Hazard – School, Clerical, Public Works
Selectman Arcudi – Public Safety (Police, Fire, Call Fire, Dispatch) (Vote)

E. Old Business

1. Green Communities Fuel Efficient Vehicle Policy (FEVP) Update – Adoption Letter and MOU EEA PAG Round 4 Hopedale MP – *Mimi Kaplan, CMRPC*
2. COVID Updates
3. Mediation Updates; Attorney Peter F. Durning, Special Counsel

- F. Public and Board Member Comments (votes will not be taken)
- G. Correspondence and Selectmen Informational Items (votes will not be taken)
- H. Requests for Future Agenda Items:
- I. Administrator Updates (In Packet)
- J. **Executive Session:** Motion: 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. Roll Call Vote
 1. **Purpose: Litigation strategy re: Town v. Jon Delli Priscoli, Trustee, et als, Attorney Durning present.**
 2. **Purpose: Collective Bargaining; All units.**

**Please note the Board of Selectmen agenda may be subject to change and items not anticipated maybe discussed.*

Pursuant to Governor Baker's Order of March 12, 2020 suspending certain provisions of the Open Meeting Law (OML), G.L. c30A §18, and the Governor's Order of March 15, 2020 imposing limitations on the number of people that may gather in one place, this meeting of the Town of Hopedale Board of Selectmen will be conducted via remote participation.

If you wish to speak, please reserve comments until the Public Comment section of the meeting. If you are using video, you may either raise your hand to be acknowledged by the Chair or use the "Raise Your Hand" button. Please wait to speak until you are acknowledged by Chair. If participants cannot conduct themselves in accordance with these guidelines, they will be removed from meeting.

Also Streamed Live, click here: https://townhallstreams.com/towns/hopedale_ma

EXHIBIT 18

**Board of Selectmen
Regular Meeting Minutes
February 8, 2021
7:00 PM**

Call to order 7:00 p.m. via Zoom Meeting

Chair Keyes convened the meeting at 7:00PM

Pledge of Allegiance

A. Consent Items

1. Accepting the Donation of \$200 to the Bancroft Memorial Library from Frederick G. Oldfield, III, Chair of the Bancroft Memorial Library Trustees, in memory of his Grandmother, Marjorie Hattersley (Letter Attached)

Chair Keyes read the letter provided by Robyn York, Director of Bancroft Memorial Library. Chair Keyes thanked Frederick for his generosity and donation. Selectman Arcudi echoed Chair Keyes sentiments and thanked Frederick for his service, time, and effort he spends with the Library.

Selectman Arcudi made a motion to accept the donation of \$200 to the Bancroft Memorial Library from Frederick G. Oldfield, III, Chair of the Bancroft Memorial Library Trustees, in memory of his Grandmother, Marjorie Hattersley. Chair Keyes seconded the motion.

Hazard – Aye, Arcudi – Aye, Keyes – Aye

B. Appointments and Resignations

1. **7:15 p.m.** Joint Meeting per M.G.L. Chapter 41, §11, with remaining Water Commission members, to consider Appointment of Donald Cooper (No posted meeting for W/S – review letter received)

Town Administrator, Diana Schindler, stated that this item will be passed over and revisited at a future Board of Selectmen meeting due to the Water and Sewer Department not posting a joint meeting agenda.

2. Appointment of Melissa Butler to the Master Plan Steering Committee (Talent Bank Form Attached)

Selectman Arcudi asked Town Administrator if the Master Plan Steering Committee is a full Board with these appointments, Town Administrator confirmed that after this meeting the Master Plan Steering Committee will have a full Board. Selectman Arcudi thanked Melissa Butler for her participation on the Master Plan Steering Committee.

Selectman Hazard made a motion to appoint Melissa Butler to the Master Plan Steering Committee. Selectman Arcudi seconded the motion.

Hazard – Aye, Arcudi – Aye, Keyes - Aye

3. Appointment of Kaplan Hasanoglu to the Master Plan Steering Committee

Chair Keyes thanked Kaplan Hasanoglu for his participation on the Master Plan Steering Committee.

Selectman Arcudi made a motion to appoint Kaplan Hasanoglu to the Master Plan Steering Committee. Selectman Hazard seconded the motion.

Arcudi – Aye, Hazard – Aye, Keyes – Aye

C. Public Hearing None

D. New Business*

1. Approve MOU with CMRPC for implementation of EEA grant in the amount of \$32,500 (TA to sign) (vote)

Town Administrator briefly explain the EEA (Executive Office of Environmental Affairs) Grant. Schindler stated that this grant opportunity became available, and she has been working with CMRPC to carry out an open space plan. It is stated in the MOU that some of these funds will be applied to Administrative processes to update the Zoning Bylaws. Schindler has informed the Planning Board at a previous meeting and the Planning Board is ready to assist.

Selectman Hazard made a motion to approve the MOU with CMRPC for implementation of EEA grant in the amount of \$32,500. Selectman Arcudi seconded the motion.

Hazard – Aye, Arcudi -Aye, Keyes – Aye

2. Collective Bargaining Assignments –
Selectman Hazard – School, Clerical, Public Works
Selectman Arcudi – Public Safety (Police, Fire, Call Fire, Dispatch) (Vote)

Selectman Hazard made a motion to approve the Collective Bargaining Assignments. Selectman Arcudi seconded the motion.

Hazard – Aye, Arcudi – Aye, Keyes – Aye

E. Old Business

1. Green Communities Fuel Efficient Vehicle Policy (FEVP) Update – Adoption Letter and MOU EEA PAG Round 4 Hopedale MP – *Mimi Kaplan, CMRPC*

Schindler informed the Board of Selectmen that there have been updated State parameters on the FEVP. The Board adopted the FEVP at a previous meeting but due to the parameters being updated, Schindler needs to inform the Board and send a letter to the State to inform them that the Board is aware and approves. The updated parameters by the State are minimal and will mostly affect the Schools. The School Committee addressed and approved this at their previous meeting.

2. COVID Updates

Town Administrator Schindler stated that currently the Town Hall is closed to the public, however, staff hours have increased. There have been ongoing discussions regarding reopening the Town Hall to the public. Once Hopedale is no longer in the “red category” and at “yellow or green” then the Town Hall will reopen to the public. If Hopedale moves to the “yellow” category by Friday, they will reassess Town hall opening at an earlier date. There have been discussions regarding COVID vaccines and vaccine clinics in Hopedale. Schindler has been working with Bill Fisher, Hopedale Health Agent, and Salmon VNA, Hopedale has a contract with, to discuss the possibility of setting up COVID clinics and acquiring refrigeration for the vaccinations. Schindler has been looking at possible CARES Act funding for vaccinations as well.

3. *Mediation Updates; Attorney Peter F. Durning, Special Counsel*

Attorney Durning shared a presentation with the Board and the public to inform them of recent developments and the culmination of the effort to transpose the term sheet that the Board approved at their meeting on January 25, 2021 to the final settlement agreement. Attorney Durning presented slides as a reference, displaying the parcels (A, B, C, D, E) of One Hundred Forty Realty Trust that are being discussed in the settlement agreement. Durning stated that there has been a change to Parcel B since the last meeting, the GU RR has agreed to extend a riparian buffer for the entire southeast portion of Parcel B. The Trust and the GU RR have agreed that the whole 50ft length of the southeastern border will be a no-build/riparian buffer. There will be no physical or vertical structures at this location, there is a provision, that states there can be storm water infrastructures that facilitate infiltration but not treatment and it can have driveways in portion of the area. This is the only change to the slide presented showing the division of the parcels.

Attorney Durning felt that some items need to be reiterated, such as, the Board of Selectmen have always held the authority to act on the Right of First Refusal under G.L. c. 61, 8, nothing about the Special Town Meeting vote or the on-going litigation changes that authority. As the Town's Chief Executive authority, the Board of Selectmen has general authority for conducting and resolving litigation. Lastly, to the extent, the Settlement Agreement with GU RR and the Trust results in the Town of Hopedale acquiring less land for less money than was authorized at Special Town Meeting, no further authorization is required. It is important to recognize the status quo. Though Hopedale has arguments for acquiring the portion of 364 West Street subject to G.L. c. 61, at present that land is controlled by the One Hundred Forty Realty Trust. Both Judge Rubin and Judge Lombardi acknowledged that the substitution of the trustees occurred. Rail Roads enjoy broad preemptions under federal law. Part of the reasons motivating the Board of Selectmen to seek a negotiated solution, was to secure better environmental protections for the Town than the Town would have had if the GU RR obtained the land outright. Though railroads enjoy a preemption over State and local regulations, they are bound to follow federal law, including the Clean Water Act and, extent applicable, the Safe Drinking Water Act.

What is important to understand about the proceeding that we are going through tonight is that the Board of Selectmen have already authorized the execution of a settlement agreement at their meeting on January 25, 2021 under the terms sheet. Between January 25, 2021 and today (February 8, 2021), Attorney Durning has been working with Counsel for the GU RR and the Trust and has negotiated some revisions to the term sheet that clarify certain elements in the agreement and provide further enhancements for the Town. Attorney Durning recognized that at the previous meeting he was asked if revisions to the term sheet were possible, he did not state that it was a certainty that any of the terms from the term sheet could be altered because we had entered a binding agreement with the term sheet. The GU RR and the Trust were able to discuss certain modification that would provide additional benefits to the Town.

Attorney Durning discussed the letter received by the Board of Selectmen and dated February 5, 2021, from the Water and Sewer Commissioners that stated the terms of the term sheet are violating their authorities. Durning stated that the Water/Sewer Commissioner's authority is not as vast as asserted in their letter. Given the posture of the conveyance being contemplated by the settlement agreement, which involves the grant of land by a private party to the Town, the concerns about the Commissioner's authority under any eminent domain power are not present here. Commissioners have authority over this land as water supply, at this moment in time, it is not certain that 364 West Street can support a public water supply. The Hopedale Zoning Map for 364 West Street shows that the portions of land discussed is zoned as industrial. This land is not in the Ground Water Protections bylaw district, however, pursuant to the agreement the Trust is agreeing to adopt certain deed restrictions that will impose the same land use controls that are present in the Ground Water Protection bylaw over parcels B and C that will be controlled by the Trust and GU RR.

While the Commissioners do not have the breadth of authority over this parcel as it is presented in their February 5, 2021 letter, the Commissioners and the Water Department do have a significant role to play with the potential development of a public drinking water supply at 364 West Street. Given that both the Town and GU RR have an interest in exploring the land in Parcel A for a potential water supply, the Settlement Agreement includes a provision for a cost sharing agreement that is subject to review and approval by the Water/Sewer Commissioner. In addition, the settlement agreement removes any constraint on the sequence of any exploration for water supply by the Commissioners and the Water Department. There was a mandate in the term sheet that the Town would first look to explore the possibility of a bedrock well. This requirement was removed, as the cost sharing agreement would go into operation, the GU RR and Water Department would explore the viability of wells in the shallow groundwater well or wellfield, they would be conducting this work at the same time while consolidating and sharing that effort.

Attorney Durning pointed out key provisions that are addressed and changes that have been made in the settlement agreement, such as, (1) the Trust or its designee and/or successors shall comply with the applicable health and safety state and federal laws and regulations regarding the development and operation of a water supply well provided however, nothing herein shall be interpreted as subjecting any such work to any local preclearance requirements. (2) The settlement agreement provides a mechanism for the assessment of roll back taxes for a change in use of the land classified under Chapter 61. The value of the roll back taxes will be assessed by the Hopedale Board of Assessors prior to Closing. To preserve the bargained for cost of the land in Parcel A, that the Town and GURR has settled on, the purchase price will be increased by the assessed tax then Trust will be obligated to pay the tax within 5 days. Due to this, the purchase price for parcel A remains consistent with the result of the negotiation. (3) GU RR has proposed donating Parcel D (363R West Street) to the Town. This will be subject to approval at Town Meeting, pursuant to G.L. c. 40, 14. (4) Section 1.e.iv. expressly references the involvement of the Parks Commission and the Conservation Commission with respect to the replication easement area on the east side of Parcel A. (5) The language in Section 5.a stated the Town shall not unreasonably withhold support for GU RR's future application(s) for state and federal grants. (6) the calculation of the survey costs in 5.b is based on a cost-sharing between the acreage in Parcel A for the Town and the acreage in Parcel, C and E, for the Trust. (7) To preserve the status quo and avoid local actions that would constitute impermissible preclearance activity, the Town shall not take any action inconsistent with the terms and intent of this agreement to extinguish, restrict, eliminate or to take by eminent domain the easement areas delineated on Exhibit 1 (Section 5.f). The Town acknowledges that the land subject to this agreement has historically been zoned for Industrial uses within the Town, and further acknowledges that the Defendants relied on the zoning status of this land as allowing Industrial uses as a matter or risk intentionally acquire the subject land and thereafter to effectuate the allocation of Parcel A, B, C, D, and E in this agreement. The Board of Selectmen shall continue to support the zoning of Parcels B, C, and E as permitting Industrial uses as a matter of right. (8) The action to enforce language in section 14 expressly references the ability to bring actions in Massachusetts State Courts for the enforceability of the agreement. There is language requiring the parties to confer in good faith to try and resolve the dispute. There is also a fee shifting provision – the loser in any enforcement action pays the cost of the prevailing party. (9) The Board of Selectmen shall be designated as the decision-making body of the Town for the purpose of implementing the provision of this settlement agreement. The Board of Selectmen shall have the right to consult with any such board, commission, or department as is necessary for carrying out any such terms of this agreement but shall retain decision-making authority to the extent permitted by law.

Selectman Hazard asked Attorney Durning to clarify if there is a timeline and/or deadline, does the Board of Selectmen have time to address some issues that have been brought to them by the Water Department, Conservation Commission, and the Public. Attorney Durning responded that yes, regarding the timeline, pursuant to the terms of the term sheet, the term sheet being a binding commitment, we have until February 9, 2021 to sign and complete the transition from the term sheet to the finalized terms of the settlement agreement. Selectman Hazard asked if the request to post pone the agreement by the Conservation Commission, Water Department and the residents that are suing the Town is possible? Attorney Durning stated that the vote to commit to the settlement agreement was already taken at the January 25, 2021 meeting. Selectman Arcudi asked Attorney Durning that in points 8 and 9, the land will remain zoned as Industrial and that the Town will not seek eminent domain, how will the Town know this in the far future so that does not happen? Also, regarding the donated land, does there have to be a Special Town Meeting, or could this item be put on the Annual Town Meeting? Attorney Durning responded that the donated land item can go on the Annual Town Meeting, a Special Town Meeting is not necessary.

Chair Keyes opened the meeting for public discussion. Keyes acknowledged that Attorney Lurie is on the meeting, Attorney Lurie represents the citizens that are suing the Town regarding the land at 364 West St. Keyes asked Attorney Durning if we should acknowledge and speak with Attorney Lurie at this meeting tonight? Attorney Durning advised it would not be appropriate for Attorney Lurie to speak and advocate on behalf of the residents he represents. He can speak during this meeting. Attorney Lurie stated he represents 10 residents of Hopedale, that he sent a letter to the Board of Selectmen and discussed the letter with Attorney Durning. Attorney Lurie stated that he feels that the Chapter 61 rights of the Town remain in effect and the deal abandons those rights. Attorney Lurie continued to inform the Board, Attorney Durning and Resident of his position and reasons as to why the Town should have moved forward with litigation to obtain the land, as it was the Town's right to obtain the land.

Selectman Arcudi asked Attorney Durning with the pending lawsuit by the residents, does this change the timeline of the settlement agreement? Arcudi fears that a lawsuit could potentially make the agreement with GU RR and the Trust null or void. Then causing the Court to step in and the Town not getting any land. Attorney Durning responded that there are some additional activities that need to occur that are spelled out in the settlement agreement particularly the execution of a purchase and sale agreement, during that period there is going to be an engineer and a survey of 364 West Street so that we get the precise meets and bounds that are intended to be conveyed. These activities typically take 60 days, there will be 60 days before a formal closing. Attorney Durning stated that it would depend on the tactics that Attorney Lurie and the residents he is representing use. What is anticipated in the settlement agreement is that the agreement memorializes the agreement that has been reached between the Town and GU RR. Pursuant to the terms of the settlement agreement the outstanding litigation and the surface transportation board will be closed/dismissed and the current litigation in the land court regarding the rights under chapter 61 will also be dismissed. If another group decides to sue the Town, then it should not affect the timeline of the settlement agreement. Selectman Hazard asked what the consequences would be if the Board of Selectmen choose to postpone per the request of the residents that are suing the Town. Attorney Durning stated that the Trust and GU RR would likely insist on compliance with the terms of the terms sheet and the modifications that we secured through the settlement agreement would be void.

Attorney Durning wanted to stress that about submitting material to the land court Judge. The settlement is not subject to land court approval. This is the determination of three litigants, the Town, the Trust, and GU RR. They have arrived at a resolution of their agreement and their issues. There is not requirement to submit the resolution to the land court for approval. Multiple residents raised concerns regarding they feel that the process was rushed, they felt that the Board did not follow the Town Meeting vote to purchase the land, and that the Water/Sewer and Conservation Commissions should have been involved more. Attorney Durning stated that all the work that the Commissions put into this was utilized and used by the Selectmen. Selectman Arcudi stated that the public was asked what their main concerns are regarding this land if purchasing the land outright was not possible. The Board and Attorney Durning worked to make sure those public requested were met. Their main concerns being water supply protections current and future, parkland protection and conservation, watershed protection.

Several residents have asked if it would be possible to edit the date on the term sheet, to give the Selectmen and the residents more time to review and to avoid possible litigation with Hopedale residents. Attorney Durning responded that, the date is not changing, he feels that changing the date due to the threat of a litigation is warranted.

A resident asked Attorney Durning if the Town were to fail at Land Court and the Surface Transportation Board would there be any recourse? Durning responded that yes, surface transportation board decisions are reviewable by the federal court system, so there could have been an appeal of the decision of the surface transportation board to federal court. Decisions of the land court are appealable to the appeals court and ultimately, the Supreme Judicial Court of MA. That was part of the consideration in this matter, that given how close some of the issues were and how dramatic the swing for the winning and losing party that the likelihood of success and cost of litigation would involve many layers of practice following the resolution.

- F. Public and Board Member Comments (votes will not be taken)
- G. Correspondence and Selectmen Informational Items (votes will not be taken)
- H. Requests for Future Agenda Items:
Selectman Hazard asked to add the Select Board name change to the next agenda.
- I. Administrator Updates (In Packet)

- J. **Executive Session:** Motion: 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. Roll Call Vote
 1. **Purpose: Litigation strategy re: Town v. Jon Delli Priscoli, Trustee, et als, Attorney Durning present.**
 2. **Purpose: Collective Bargaining; All units.**

Selectman Arcudi made a motion to move into executive session. Selectman Hazard seconded the motion.

Roll Call Arcudi – Aye, Hazard – Aye, Keyes – Aye

Chair Keyes dissolved the meeting at 10:42PM

Submitted by:

Lindsay Mercier
Lindsay Mercier, Executive Assistant

Adopted: _____

EXHIBIT 19

LURIE FRIEDMAN LLP

ONE MCKINLEY SQUARE
BOSTON, MA 02109

DAVID E. LURIE

617-367-1970
dlurie@luriefriedman.com

February 7, 2021

BY EMAIL AND CERTIFIED MAIL

Brian Keyes, Chairman
Board of Selectmen
Town of Hopedale
78 Hopedale St.
Hopedale, MA 01747

Re: Town of Hopedale's Right of First Refusal at 364 West Street And Settlement Term Sheet

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

This firm represents at least ten taxpaying citizens of the Town of Hopedale ("Hopedale Citizens")¹ in relation to the Town of Hopedale's purported settlement of the Land Court lawsuit ("Settlement") commenced by the Hopedale Board of Selectmen ("BOS") against the Grafton & Upton Railroad ("GURR")². The lawsuit relates to the Town's exercise of its right of first refusal to acquire certain forestlands at 364 West Street in Hopedale (the "Property").³ The Hopedale Citizens request that the BOS cease and suspend any further action towards finalizing the purported Settlement with GURR because the Settlement Term Sheet prepared in mediation between the BOS and GURR is illegal and invalid for multiple reasons, namely, GURR is not the rightful property owner, it is in violation of the Town's right of first refusal pursuant to M.G.L. c. 61 and is an agreement to which the BOS has not been authorized to enter. We write to serve notice to the BOS that the Hopedale Citizens intend to sue the BOS pursuant to M.G.L. c. 40 § 53 (restraint of illegal expenditures) and c. 214 § 7A (prevent damage to the environment) in the event the BOS does not suspend its actions towards finalizing the Settlement pending independent review by outside counsel.

¹ The Hopedale Citizens include, without limitation, Elizabeth Reilly, Carol J. Hall, Hilary Smith, David Smith, Donald Hall, Megan Fleming, Stephanie A. McCallum, Jason A. Beard, Amy Beard, Shannon W. Fleming, and Janice Doyle.

² GURR also includes Jon Delli Priscoli and Michael Milanoski.

³ The Property is a total of 155.24 acres, including 130.18 acres classified as forest land pursuant to Chapter 61 and 25.06 acres of wetlands that are undeveloped and surrounded by the forest land. The Property is depicted as the center area, shaded orange on the map attached as **Exhibit 1**. Attached hereto as **Exhibit 2** is the plan of division attached and referenced in the Term Sheet.

Factual and Procedural Background

As the BOS is well aware, the Town has significant interest in the Property at 364 West Street. The Property consists of 155.24 acres of undeveloped forestland and wetlands, is contiguous with the Town's public parklands and is a valuable potential water source for the Town. Hopedale's Water and Sewer Commissioners, Finance Committee, Conservation Committee, Parks Department, and broad community all support protection and conservation of the entire Property through acquisition by the Town.

GURR has also long coveted the Property but for a different reason – to expand its rail system in Hopedale and construct a transloading facility. On June 27, 2020, the trustee of the Property entered into a P&S agreement with GURR for GURR to purchase the Property from the trustee for \$1,175,000. Because 130.18 acres of the Property are subject to c. 61, Mr. Milanoski, on July 9, 2020, on behalf of the trustee, provided the Town with a Notice of Intent to Sell Forest Land Subject to Chapter 61 (“Notice”) to be used for railroad transloading uses. The trustee's Notice included the entire Property in the purchase amount without separating out the purchase price of the 130.18 acres of c. 61 forestland from the 25 acres of wetlands.

The Town pointed out the potential error to the trustee while moving forward with the process of considering purchase of the Property. The Town expended significant resources and time considering whether to exercise its first refusal option, including hiring experts and conducting due diligence on the Property and its potential value to the Town for conservation, recreation and as a potential water source. The Town informed the trustee that it was considering exercising its first refusal option.

On October 7, 2020, a month before the Town's 120-day option period expired, the trustee purportedly withdrew its Notice, first disputing that the Notice was defective and then stating that the trustee “specifically withdraws its Notice of Intent to sell or convert the land that is currently in Forest Land subject to Chapter 61. Any further notice to sell or convert the land will be subject to a new notice of Intent.” The Town correctly responded on October 8 that once a first refusal option ripens, it is irrevocable. The Town then continued to consider its first refusal option.

Just four days later, GURR orchestrated a series of conveyances designed to illegally seize control of the Property before the Town could exercise its first refusal option. On October 12, 2020, the trustee sold the entire beneficial interest in the 130.18 acres of the Property that is forestland protected under c. 61 to GURR for \$1,175,000.⁴ That same day, the trustees of the Property trust resigned and named GURR as the new trustees. By these actions GURR claimed control of the Property. Despite the representations by the former trustee that a new sale or transfer of the Property would be subject to a new notice of intent, the trustee failed to provide

⁴ Also that same day, GURR separately purchased for \$1.00 the Property's 25.06 acres of wetlands that are surrounded by the c. 61 forestland and an additional 20 acre parcel on the opposite side of West Street, at 363 West Street.

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such a notice to the Town when it transferred 100% of the beneficial interest in and legal title to the Property to GURR.

On October 24, 2020, the Town held a Special Town Meeting, attended in person (despite Covid-19) by over 400 citizens of Hopedale. By unanimous votes, the Town approved two warrant articles relating to the Property, Articles 3 and 5. Article 3 authorized the Town to acquire, by purchase or eminent domain, the 130.18 acres of the Property subject to c. 61 and to appropriate \$1,175,000 to acquire the forestland, either by exercise of its first refusal right or by an eminent domain taking. See Special Town Meeting Minutes, attached hereto as **Exhibit 3**. Article 5 authorized the Town to acquire by eminent domain the 25.06 wetland acres of the Property and appropriated \$25,000 to do so. The BOS then voted to acquire the Property in accord with the Town Meeting authority.

On October 28, 2020, the Town sued GURR in Land Court to stop GURR's land clearing on the Property and to have a court rule on the validity of the Notice of Intent.

On November 2, 2020, the Town informed the trustees that the Town was exercising its first refusal option to purchase the forestland portion of the Property and that the Town was taking the 25 acres of wetland of the Property by eminent domain.

The court denied the Town's request for a preliminary injunction in a brief and narrow decision finding expressly that the Town is entitled to a right of first refusal but it is unclear whether or when that right has triggered or ripened:

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

Thus, the court held preliminarily that the only Notice of Intent served was defective, as the Town had initially indicated, because it included non-forestland with forestland in the Notice. But the court did not reach any of the other issues raised in the litigation by the Town or GURR, including whether federal railroad preemption trumped the Town's c. 61 rights. In January 2021, the Town and GURR engaged in two sessions of mediation, culminating in a Term Sheet that is a nullity because GURR is not the rightful property owner; the BOS was not authorized to agree to the terms; the Term Sheet is contrary to the Town Meeting's intent and vote; and the Settlement is not in the Town's interests.

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The Term Sheet, among other things, would require the Town to pay \$587,500 to GURR in exchange for only approximately 40 acres of the 130.18 acres of c. 61 forestland. The Town would also receive most of the 25 acres of wetland in the center of the forestland – 25 acres that GURR bought for less than \$1.00. GURR would also give 20 acres of the separate non-forestland across the street, land that the Town Meeting did not consider or want and land that GURR got for the balance of the \$1.00. In other words, the Town would pay approximately \$14,687.50 per acre of forestland and get not even a third of the forestland to which it is entitled. Other egregious terms include the Town's obligation to support GURR's applications for state and federal grants; designation of the BOS as the sole decision-making body, a usurpation of the Water and Sewer Board's authority; a waiver of the Town's right of first refusal (which remains fully intact); and waiver of roll-back taxes that GURR would otherwise owe.

At bottom, GURR is not the rightful legal owner of the Property, the Town retains its right of first refusal option, and the Town has authorized an eminent domain taking of the entire Property from the Trust. The prior trustee's purported transfer of the beneficial interest in and legal title to the Property to GURR was itself illegal as in violation of Chapter 61 and the Town's right of first refusal. The prior trustee never gave the Town a Notice of Intent or 120 days to exercise its first refusal option on the transfer of the beneficial interest and title. GURR did not hold legal ownership to enter into the Term Sheet and the BOS was not authorized to agree to the terms.

1. The Term Sheet is a Nullity Because GURR is Not the Legal Owner of the Property and is in Violation of Chapter 61.

The Town fully exercised its first refusal option, within 120 days, on the only Notice of Intent it received. In addition, the Town, by unanimous Town Meeting vote, authorized an eminent domain taking of the Property from the rightful owner of the Property – which is not the railroad. If the first refusal option never ripened because Mr. Milanoski sent an invalid Notice of Intent to sell, the Town's first refusal right remains fully in effect and the Property remains subject to Chapter 61. A subsequent bona fide Notice of Intent was never served on the Town, leaving the first refusal right fully intact, rendering the railroad's purported take over and control of the Property illegal and null. GURR does not have legal ownership and control of the Property and cannot enter into a contract that governs the ownership of the Property.

Because the trustee did not serve a valid Notice of Intent to transfer use of the Property, the forestland remains subject to Chapter 61 and the Town's right of first refusal and there has been no event to implicate preemption. The Term Sheet is a nullity because it does not include the true owner of the land, treats the railroad as an unrestricted owner which it is not, and gives up c. 61 rights which BOS has no lawful basis to give up. See Town of Brimfield v. Caron, 2010 WL 94280, *10-11 (Mass. Land Ct. Jan. 12, 2010) (conveyance of forest parcel was a sale or conversion triggering the Town's right of first refusal pursuant to G.L. c. 61, §8; subsequent actions by Town and putative purchaser were therefore "a nullity") (cited by Judge Rubin in her

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November 23, 2020 Order on the Town’s Motion for Preliminary Injunction); after trial, 2015 WL 5008125 (2015) (ruling that Town had right to purchase forest lot for \$186,500).

2. The Term Sheet is Illegal Because the BOS Does Not Have the Authority to Agree to Its Terms.

The Term Sheet is also illegal because the unanimous votes at Town Meeting authorized the BOS to acquire by exercise of its first refusal option and eminent domain, the full c. 61 forestland and wetland for conservation, recreation and potential water supply. The BOS did not have the authority to enter into a contract for an inferior fraction of the Property for the price set forth in the Term Sheet, or the outlying property which is primarily a dying pond and a liability for the Town. These terms are inconsistent and contradictory to the Town Meeting vote and are therefore invalid. See Faneuil Investors Group v. Board of Selectmen of Dennis, 458 Mass. 1, 9 (2010) (“the board may not include a provision that differs in substantial respect from that which the town meeting approved.”).⁵

See also Bowers v. Board of Appeals of Marshfield, 16 Mass. App. Ct. 29 (1983), where the Appeals Court held that a perpetual encumbrance imposed upon six lots by a board of selectmen in an agreement for judgment, to the effect that the Town would cease to use the lots as a public parking area, in exchange for the property owner’s abandonment of a challenge to the site plan approval for sewage pumping station, was beyond the authority of the selectmen, because it had not been approved by Town Meeting. The Court stated:

[T]he perpetual encumbrance imposed upon the six lots by the selectmen was an action which they were powerless to take. The power to alienate and dispose of real estate lies with the inhabitants of the town acting at town meeting . . .

...

[T]he selectmen, offered as their part of the agreement for judgment a restriction that they lacked power to impose.

...

[If the restriction could not be challenged,] public officials could bind their governmental agencies to unlawful conduct by ready acquiescence in an agreement for judgment and, thus, circumvent the restrictions on their powers.

⁵ See, also, Salem Sound Development Corporation v. City of Salem, 26 Mass. App. Ct. 396, 399-400 (1988) (lease executed by mayor was different in substantial respect from which city council had approved, and thus was unauthorized and unenforceable against city); City of Lawrence v. Stratton, 312 Mass. 517, 521-22 (1942) (mayor had no power to bind city by agreement with private citizens reducing from \$50,000 to \$40,000 the amount to be expended by citizens in reconditioning buildings on property which city council voted to convey); Reed v. City of Springfield, 258 Mass. 115 (1927) (appropriation for taking of land does not empower the taking where the specified land being taken is not described); Breckwood Real Estate Co. v. City of Springfield, 258 Mass. 111 (1927) (order of taking by board of aldermen without statutorily-required authorization or appropriation of money by city council was void); Govoni v. Town of Acushnet, 1995 WL 1146894, *3 (Mass. Sup. Ct. Nov. 17, 1995) (“[A]ny contract made by a town’s board of selectmen without a specific appropriation to support it is invalid.”).

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Id. at 32-34 (emphasis added).

Here, the Term Sheet is substantially contrary to the authorizations by Town Meeting vote for acquisitions of the whole for parkland and public water supply. A comparison of the Property for which the Town Meeting approved acquisition compared to the parcels it would receive under the Settlement reveals how contradictory and inferior the Term Sheet is. Compare Exhibit 1 to Exhibit 2, the plan attached to the Term Sheet. Exhibit 1, produced as part of the Town's Due Diligence Report, shows that the Town voted to acquire 155 acres undeveloped land, including 130 acres of forestland and 25 acres of wetland, all contiguous with the Town's undeveloped parkland. The Town Meeting vote was clear, that the Town's acquisition of the Property would be made "to maintain and preserve said property and the forest, water, air, and other natural resources thereon for the use of the public for conservation and recreation purposes". The Town Meeting approved appropriating \$1,175,000 to acquire the 130 acres of forestland and \$25,000 to acquire the 25 acres of wetland.

In stark contrast, under the Term Sheet, the Town would get a mere 40 acres of forestland bordering 20+/- of wetland and a peripheral parcel encumbered by a dying pond that the Town never sought to acquire and the Town Meeting did not approve. Worse, the remaining 90 acres of forestland would be destroyed by the railroad's plans to clear the land for industrial uses, to construct sidetracks, yard tracks and other facilities designed to transport any number of hazardous materials. And the Town would be obligated to support the railroad's destruction of the undeveloped land.

Moreover, because the Town held the first refusal option on the entire c. 61 Property, under M.G.L. c. 40A, §3, a further Town Meeting vote would be required to give the majority of that Property to the railroad. See Bowers, supra.

None of this was ever authorized by Town Meeting and is well beyond scope of BOS authority. The BOS must abstain from finalizing these terms unless and until full review and Town Meeting vote can be had.

3. The Term Sheet Exceeds Other BOS Powers and Usurps Other Board Powers.

The Term Sheet also exceeds the BOS's authority in that it commits the Town to help the railroad apply for all state and federal grants in the future, agrees that the BOS will be the sole decision-making authority for matters involving the railroad, and agrees that the railroad will not be subject to local permitting by-laws. These commitments represent an unlawful abdication of the BOS's obligations to Hopedale residents and usurpation of powers belonging to other Town boards and committees.

With respect to the proposed obligation to help the railroad apply for all state and federal grants in the future, the BOS cannot lawfully commit to do that without knowing what those

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applications for grants will entail and their implications on the Town and its residents. See Bowers, supra.

With respect to the proposed commitment that the BOS will be the sole decision-making authority for matters regarding the railroad, this exceeds the BOS's statutory authority and usurps the authority of other Town boards and commissions that may have statutory obligations to make decisions regarding the railroad, including without limitation the Finance Committee, the Board of Water and Sewer Commissioners, the Conservation Commission, and the Parks Commission.

With respect to the proposed commitment that GURR will not be subject to local permitting by-laws, the properties at issue will be subject to all local bylaws as a matter of law to the extent they are not properly owned by the railroad. Any properties properly owned by the railroad are still subject to local bylaws unless preempted as a matter of law. The extent of such preemption must be determined on a case-by-case basis, depending on the particular facts of the bylaw at issue and the circumstances of the railroad's operations. For example, protection of the public health and environment can never be abdicated.

Inasmuch as multiple provisions of the Settlement Term Sheet likely exceed the BOS's authority, it should not be approved until there is a thorough review by independent counsel of the legality of all of its provisions.

4. The Term Sheet is in Violation of Hopedale's Bylaws Requiring Finance Committee Review.

The Hopedale Finance Committee is required to "consider all Articles and Warrants for all Town Meetings and Referenda and shall report its recommendations before each meeting or vote in print or at a public meeting for that purpose." Hopedale Bylaws, § 79-3. The Finance Committee is also required to review and make a recommendation on all contracts exceeding \$10,000. Id. §§ 79-8; 49-7. The Finance Committee was in favor of Warrant Article 3 at Town Meeting authorizing acquisition of 130.18 acres located at 364 West Street, "such acquisition to be made to maintain and preserve said property and the forest, water, air, and other natural resources thereon for the use of the public for conservation and recreation purposes to be managed under the control of the Hopedale Parks Commission..." Indeed, the Hopedale Annual Report confirms that the Finance Committee Chairman informed residents that the Finance Committee "speaks favorably for this article." The Settlement Term Sheet, however, has not been approved by the Finance Committee. The Finance Committee has not approved its proposed (1) expenditure of \$587,500 of Town funds to acquire approximately 64 acres, or (2) expenditure of unlimited funds to cover one half the surveying costs of five parcels of property. Accordingly, all provisions in the Settlement Term Sheet involving payments that require Town meeting approval or that risk exceeding \$10,000 are unauthorized and are null and void. Loring v. Inhabitants of Town of Westwood, 238 Mass. 9,

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11 (1921) (ten taxpayer action challenging wrongful expenditure valid, injunction appropriate, where even though town meeting had approved funds, local bylaw was not followed prior to the town meeting vote).

5. The Term Sheet Wrongfully and Illegally Usurps the Water and Sewer Commission's Authority.

The Hopedale Water and Sewer Commission ("Commission") has sole and "exclusive charge and control of the water department and water system." G.L. c. 41, § 69B. All "water rights" and "all works" shall be "managed, approved, and controlled" by the Commission. G.L. c. 40, § 39E. The Commission may exercise police powers to protect the water supply and watershed. G.L. c. 111, §§ 173A & 173B. The Town, through the Commission, "may develop and use any source of water supply within its limits," G.L.c. 40, § 38, and may acquire property to secure, protect, and expand the water supply, through eminent domain, purchase or otherwise. G.L. c. 40, § 39B. Section 39B vests this power in the Town's "board of water commissioners or selectmen authorized to act as such." Here, only the Commission has this power, as the BOS is not authorized under Town bylaws to act as a board of water commissioners. See Town Bylaws, §130-15 ("The Selectmen shall have the general direction and management of the property and affairs of the Town in all matters not otherwise provided for by law or these bylaws.") (emphasis added); §185-1 (establishing Commission).

Despite these and other clear mandates in the General Laws that confer vast powers upon the Commission, the BOS has voted to approve a Term Sheet that seeks to abrogate and impair the authority of the Commission. Specifically, the Term Sheet contains the following provisions relative to the water supply within the exclusive jurisdiction of the Commission:

- (1) build a bridge over a waterway, install a public water supply well (¶¶ 1(b) and 4);
- (2) commence activities for siting a new public water supply (¶ 2(a));
- (3) establish conditions before new well testing may commence (¶ 2(b));
- (4) limit the trust's obligations to ensure new well field complies with Department of Environmental Protection regulations (¶ 2(c));
- (5) establish a funding formula to share costs of water testing (¶ 2(e));
- (6) provide trust with "sole discretion" to install monitoring wells (¶ 2(f));
- (7) record a deed relative to ground water protection (¶ 3(b));
- (8) establish a "riparian buffer zone" (¶ 3(c));
- (9) limit trust's notice to state and local authorities of development plans (¶ 3(d));
- (10) establish deadline for town to identify "a financeable and feasible public drinking water supply well" (¶5 and ¶ 6(a));
- (11) divest the Commission of any decision-making authority with respect to the trust and the railroad (¶ 6 (f)).

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The Commission has not authorized these provisions or any other provisions in the Term Sheet. The BOS lacks authority to speak on behalf of the Commission or limit the powers of the Commission. Accordingly, all provisions in the Term Sheet involving current or future water rights of the Town of Hopedale are unauthorized and are null and void. See *Walter v. Town of Provincetown*, 61 Mass. App. Ct. 1109 (2004) (board of selectmen lacked authority to act as water commissioners under town charter).

6. The Term Sheet is in Violation of Article 97 of the Massachusetts Constitution.

The intent of the Town Meeting vote on Articles 3 and 5 was to obtain and preserve the Property as parkland. Because the Town voted to exercise its first refusal option and to take by eminent domain that land for parkland, such land is protected against any change in use by Article 97 of the Massachusetts Constitution. Under Article 97, municipal land devoted to parkland or public recreation or open space may not be changed to a different use without a 2/3 vote of the Massachusetts Legislature. An option to acquire such land is a sufficient ownership interest to trigger Article 97. Any sale of such land for other purposes, including railroad uses, would violate Article 97. See *Smith v. City of Westfield*, 478 Mass. 49 (2017); *Perry v. Robbins*, No. B00-0135, 2001 WL 1089484, at *1 (Mass. Super. Ct. Sept. 6, 2001). Article 97 is a law intended to protect the environment. Under G.L. c. 214, § 7A, ten citizens may commence an action for declaratory and injunctive relief for any actions causing damage to the environment in violation of laws protecting the environment. Sale of the properties and option rights at issue here to the Railroad, to be used for non-parkland purposes, violates Article 97 and is actionable under c. 214, §7A. Smith. Accordingly, we hereby demand that the Town cease and desist any sale, transfer, or abandonment of the Town's option rights under c. 61 for parkland. The BOS has 21 days to respond to this demand. If the BOS does not commit to cease abandonment of such rights, the Citizens will file suit in Superior Court to enforce compliance with Article 97.

Conclusion

The BOS must cease and desist from consummating this illegal and appalling deal to give time for meaningful review of its legality by outside counsel, the Finance Committee, the Conservation Commission, the Water and Sewer Commission, the Hopedale Citizens and all other stakeholders. Not only do the Town's first refusal rights remain fully intact and the Property subject to them, but the BOS is fully authorized and empowered to execute and record its eminent domain taking of the entire 155.24 acres of the Property. The BOS must pause the rush to finalize the Term Sheet and act to protect and preserve the forestland from utter destruction. The Property is not rightly owned or controlled by GURR and the Town retains power to acquire it and should proceed do so.

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Very truly yours,



David E. Lurie



Harley C. Racer

Enclosures

cc: Peter F. Durning, Esq.
Diana Schindler, Hopedale Town Administrator
Hopedale Water and Sewer Board
Hopedale Conservation Commission
Hopedale Parks Department
Maura Healey, Massachusetts Attorney General

Exhibit 1

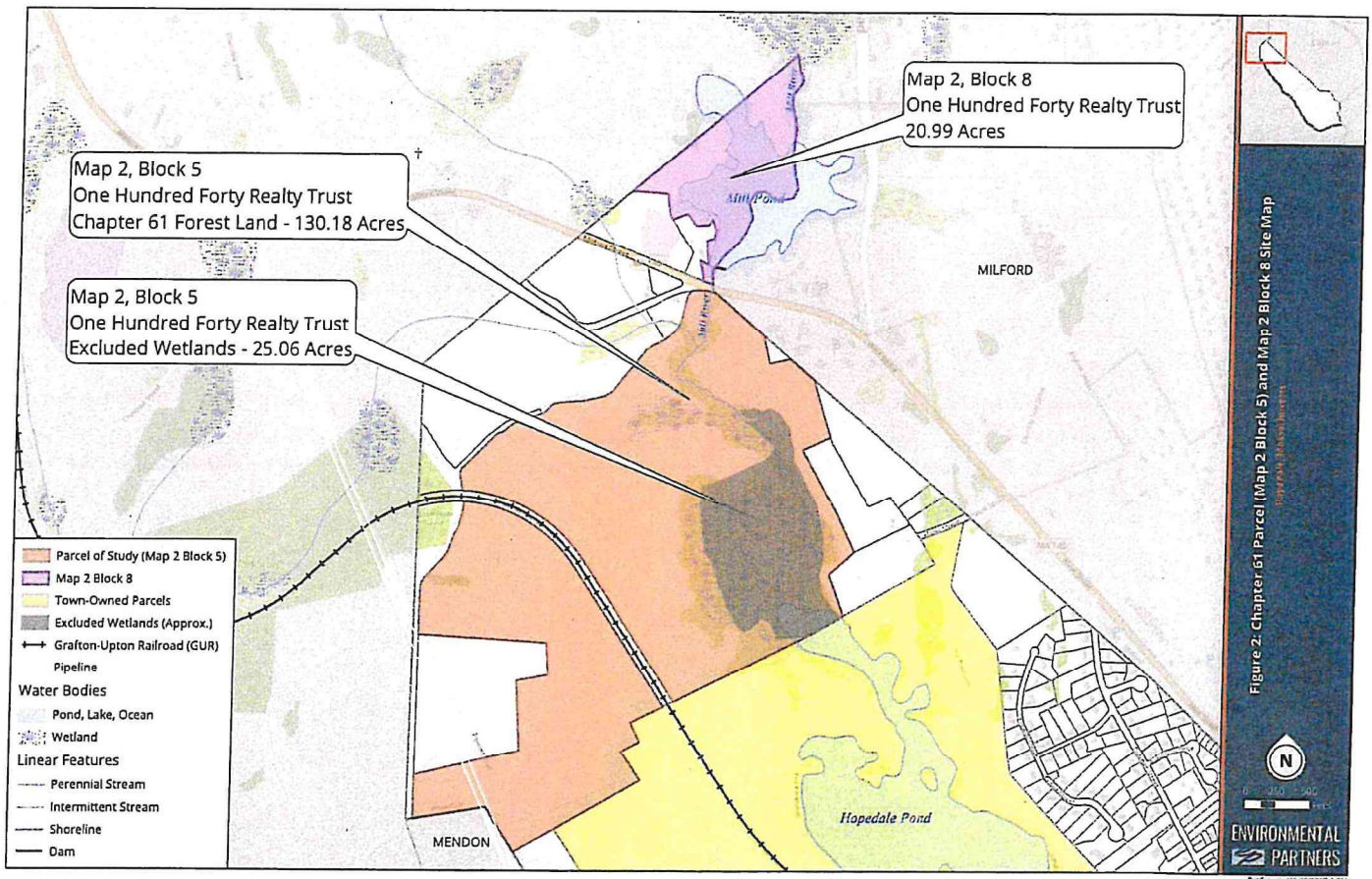
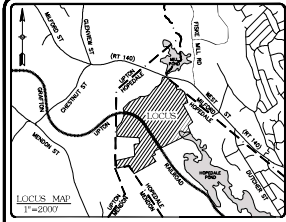


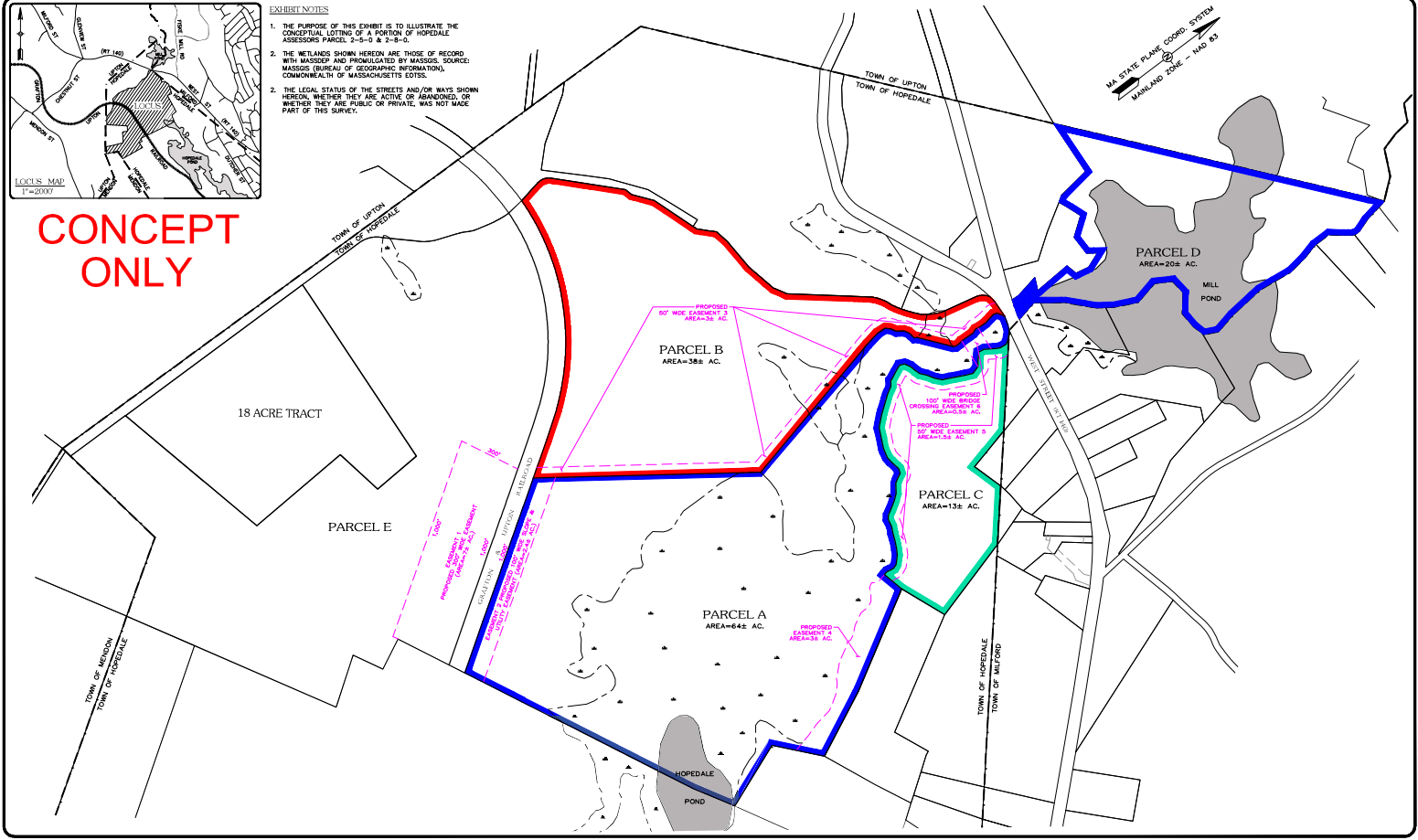
Exhibit 2

EXHIBIT NOTES

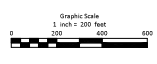
1. THE PURPOSE OF THIS EXHIBIT IS TO ILLUSTRATE THE CONCEPTUAL LOTTING OF A PORTION OF HOPEDALE ASSESSORS PARCELS 2-5-0 & 2-8-0.
2. THE WETLANDS SHOWN HEREON ARE THOSE OF RECORD WITH MASSDEP AND PROMULGATED BY MASSGIS. SOURCE: MASSGIS BUREAU OF GEOGRAPHIC INFORMATION, COMMONWEALTH OF MASSACHUSETTS LOTSS.
2. THE LEGAL STATUS OF THE STREETS AND/OR WAYS SHOWN HEREON, WHETHER THEY ARE ACTIVE OR ABANDONED, OR WHETHER THEY ARE PUBLIC OR PRIVATE, WAS NOT MADE PART OF THIS SURVEY.



CONCEPT ONLY



REVISIONS	
NO.	DESCRIPTION
0	1/28/21 ISSUED FOR AGREEMENT



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:
CONCEPTUAL LAND DIVISION EXHIBIT

PREPARED FOR:
 Grafton & Upton Railroad Company
 42 Westboro Road
 North Grafton, Massachusetts 01536

DATE:
 JANUARY 26, 2021

1 of 1
 EDC PROJECT NUMBER
 3659

3659 EDC CONCEPTUAL LOTTING 01.26.21

Exhibit 3



**SPECIAL TOWN MEETING MINUTES
FISCAL YEAR 2021**

**SATURDAY, OCTOBER 24, 2020
1:00 P.M.**

The inhabitants of the Town of Hopedale qualified to vote in elections and Town affairs met on the lawn of the Community House located at 43 Hopedale Street, Hopedale, MA 01747 on Saturday October 24, 2020. The meeting was called under the Warrant dated the 8th day of October 2020 which was posted in accordance with Town By-Laws. Moderator Eugene Phillips called the meeting to order at 1:30 PM. There were four hundred seven (407) registered voters recorded as present [a quorum being fifty (50) registered voters].

Moderator Eugene Phillips welcomed all residents and lead the Town Meeting in the Pledge of Allegiance and held a moment of silence for all that have passed before us.

Privileges of the floor were extended to the following:

Thomas M. Daige, Fire Chief
Mark Giovanella, Police Chief
Ann Williams, Professional Assessor
Brian Riley, Town Counsel
Karen Crebase, School Superintendent
Stephanie L'Etalien, Town Treasurer/Collector
Diana Schindler, Town Administrator
Peter Durning, Special Counsel
David and Laurie Mazzola 332 Mendon Street Upton, MA
Dave Sarkisian 225 Milford Street Upton, MA

Brian R. Keyes, Board of Selectman Chairman, addressed the residents with some opening remarks and stated he is grateful for the overwhelming presence on a Saturday, Outstanding!! He wanted to remind the residents that the Board of Selectmen have never lost sight of what they do, they serve the residents and have the best interest of the town in mind. Mr. Keyes feels the minority should also have an opportunity to speak even if not popular. The Board of Selectmen feel the Railroad is a budget issue and felt the residents voted against an override and had to make \$700,000.00 in cuts but are willing to spend \$1.5 million to do "something else." Mr Keyes also took a moment to recognize the various Departments for all their hard work.

A motion was made, seconded and carried to dispense the reading of the warrant.

ARTICLE 1: To see if the Town will vote to amend and balance the FY21 Omnibus Budget as voted in Article 7 of the July 21, 2020 Annual Town Meeting by transferring from available funds, appropriating available Overlay Excess, and reducing expenses by sums of money (to be outlined in Motion attachment); or to take any other action in relation thereto.

Christopher Hodgens, Finance Committee Chairman, moved to amend and balance the FY21 General Fund budget as voted in Article 7 of the July 21, 2020 Annual Town Meeting by appropriating the total sum of \$25,021,104, as presented in budget top sheet and by using \$160,000 from Overlay Excess, transferring \$389,565 from Ambulance Receipts Reserved, transferring \$492,543 from Water Enterprise Receipts and transferring \$545,936 from Sewer Enterprise Receipts.

The motion was seconded and carried unanimously.

ARTICLE 2: To see if the Town will vote to raise and appropriate, transfer from available funds, or borrow pursuant to G.L. c. 44, §7, or any other enabling authority, the sum of Two Hundred Eighty-Two Thousand Six Hundred Ninety-Three Dollars (\$282,693), or any other amount, to pay costs of updating and replacing streetlights, and for the payment of all other costs incidental and related thereto; or to take any other action in relation thereto.

Louis J. Arcudi III, Board of Selectmen, moved to appropriate, the sum of Two Hundred Eighty-Two Thousand Six Hundred Ninety-Three Dollars (\$282,693) to pay costs of updating and replacing of streetlights, 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, §7(1) or pursuant to any other enabling authority, and to issue bonds or notes of the Town therefor. Any borrowing pursuant to this vote shall be reduced to the extent of any incentive payments received by the Town from MassSave on account of this project. Any premium received upon the sale of any bonds or notes approved by this vote, less any such premium applied to the payment of the costs of issuance of such bonds or notes, may be applied to the payment of costs approved by this vote in accordance with G.L. c. 44, §20, thereby reducing the amount authorized to be borrowed to pay such costs by a like amount.

The motion was seconded and carried unanimously

ARTICLE 3: To see if the Town will vote to acquire, by purchase or eminent domain, certain property, containing 130.18 acres, more or less, located at 364 West Street, being a portion of that land described in an instrument of redemption of tax title taking recorded with the Worcester South District Registry of Deeds in Book 61533, Page 78, and shown on a sketch plan on file with the Town Clerk, and in order to fund said acquisition, raise and appropriate, transfer from available funds, or borrow pursuant to G.L. c. 44, §7, or any other enabling authority, a sum of money in the amount of One Million One Hundred and Seventy-Five Thousand Dollars (\$1,175,000.00), and to apply any discretionary grants, gifts, awards, or donations of money given to the Town for the purpose of land conservation, said property being acquired pursuant to a right of first refusal in G.L. c. 61, §8, which right is subject to exercise by a vote of the Board of Selectmen, such acquisition to be made to maintain and preserve said property and the forest, water, air, and other natural resources thereon for the use of the public for conservation and recreation purposes to be managed under the control of the Hopedale Parks Commission, and

further 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; or to take any other action in relation thereto.

Brian R. Keyes, Board of Selectman Chairman, moved to appropriate, the sum of One Million One Hundred Seventy-Five Thousand Dollars (\$1,175,000), to pay costs of acquiring certain property, containing 130.18 acres, more or less, located at 364 West Street, being a portion of that land described in an instrument of redemption of tax title taking recorded with the Worcester South District Registry of Deeds in Book 61533, Page 78, and shown on a sketch plan on file with the Town Clerk, 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, §7(1) or pursuant to any other enabling authority, and to issue bonds or notes of the Town therefor. Any borrowing pursuant to this vote shall be reduced to the extent of any grants or gifts received by the Town on account of this acquisition from the Hopedale Foundation. Any premium received upon the sale of any bonds or notes approved by this vote, less any such premium applied to the payment of the costs of issuance of such bonds or notes, may be applied to the payment of costs approved by this vote in accordance with G.L. c. 44, §20, thereby reducing the amount authorized to be borrowed to pay such costs by a like amount.

Christopher Hodgens, Finance Committee Chairman, informed residents the Finance Committee speaks favorably for this article. Mr. Hodgens publicly thanked the Hopedale Foundation for its generous pledge of covering \$750,000.00, nearly half the cost of acquiring the property. Becca Solomon, Conservation Commission Chairman, Attorney Peter Durning, Special Counsel, Ed Burt Water and Sewer Chairman, and resident Glenda Hazard also spoke in favor of the article. After presentations from all, the motion was made, seconded and carried unanimously

ARTICLE 4: To see if the Town will vote to acquire, by purchase or eminent domain, for the purpose of public park land, the land located at 364 West Street which is not classified as forest land under Chapter 61 of the General Laws, consisting of 25.06 acres, more or less, being a portion of that land described in an instrument of redemption of tax title taking recorded with the Worcester South District Registry of Deeds in Book 61533, Page 78, and shown on a sketch plan on file with the Town Clerk, and in order to fund said acquisition, appropriate from Free Cash, or raise from the current tax levy, or borrow pursuant to G.L. c. 44, §7 of the General Laws, or any other enabling authority, a sum of money, 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; or to take any other action in relation thereto.

Louis J. Arcudi III, Board of Selectmen, moved to pass over.

ARTICLE 5: To see if the Town will vote to 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 forest land under Chapter 61 of the General Laws, consisting of 25.06 acres, more or less, being a portion of that land described in an instrument of redemption of tax title taking recorded with the Worcester South District Registry of Deeds in Book 61533, Page 78, and shown on a sketch plan on file with the Town Clerk, and in order to fund said acquisition,

appropriate from Free Cash, or raise from the current tax levy, or borrow pursuant to G.L. c. 44, §7 of the General Laws, or any other enabling authority, a sum of money, 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; or to take any other action in relation thereto.

Louis J. Arcudi III, Board of Selectmen, moved 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 forest land under Chapter 61 of the General Laws, consisting of 25.06 acres, more or less, being a portion of that land described in an instrument of redemption of tax title taking recorded with the Worcester South District Registry of Deeds in Book 61533, Page 78, and shown on a sketch plan on file with the Town Clerk, and in order to fund said acquisition, borrow pursuant to G.L. c. 44, §7 of the General Laws, or any other enabling authority, 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.

The motion was seconded and carried unanimously.

ARTICLE 6: Article Presented by Petition

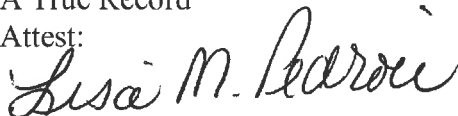
To see if the Town will vote to exercise its option to purchase the 155.24 acres of land of Charles E. Morneau, Trustee, as represented in the Notice of Intent to Sell served on July 9, 2020, and to authorize the Board of Selectmen to act for the Town in taking all actions necessary to exercise said option and effectuate the acquisition; and further, to fund acquisition, to appropriate a sum of money in the amount of \$1,250,000, or other sum, and to determine how such sum shall be raised, whether from the current tax levy, by transfer from available funds, or by borrowing said sum pursuant to the provision of Chapter 44 of the General Laws; or to take any other action in relation thereto.

Resident, Liz Riley, made a motion to pass over this article which was seconded and carried unanimously.

Eugene Phillips thanked the town residents and town officials for their attendance. A motion to dissolve the Warrant was made, seconded and carried. Meeting was dissolved at 2:31 pm.

A True Record

Attest:



Lisa M. Pedroli, Town Clerk

EXHIBIT 20

COMMONWEALTH OF MASSACHUSETTS
LAND COURT DEPARTMENT
OF THE TRIAL COURT

LAND COURT
FILED
2021 FEB 10 PM 2:22

WORCESTER, SS

CIVIL ACTION NO.20 MISC 0467 [DRR]

TOWN OF HOPEDALE)

Plaintiff)

vs.)

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

Defendants)

STIPULATION OF DISMISSAL WITH PREJUDICE

Pursuant to Mass. R. Civ. P. 41(a)(1)(ii), the parties, by and through undersigned counsel, hereby stipulate that all claims are dismissed with prejudice and without costs to either side.

Each side to bear their own attorney's fees. All rights of appeal are specifically waived.

TOWN OF HOPEDALE

/s/ Peter F. Durning
Peter F. Durning, BBO# 658660
Peter M. Vetere, BBO# 681661
Mackie Shea Durning, PC
20 Park Plaza, Suite 1001
Boston, MA 02116
617-266-5104
pdurning@mackieshea.com
pvetere@mackieshea.com

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

/s/ Donald C. Keavany, Jr.
Donald C. Keavany, Jr., BBO#631216
Andrew P. DiCenzo, BBO#689291
Christopher, Hays, Wojcik & Mavricos,
LLP
370 Main Street, Suite 970
Worcester, MA
508-792-2800
dkeavany@chwmlaw.com
adicenzo@chwmlaw.com

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorney of record for each other party by ~~mail, postage prepaid~~, electronic mail (hand-delivering a copy of same) to all counsel of record on Feb. 10, 2021

/s/ Peter F. Durning

EXHIBIT 21

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

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

Plaintiffs,)

v.)

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

Defendants.)
_____)

Civil Action No.

VERIFIED COMPLAINT

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

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

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

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

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

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

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

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

PARTIES

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

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

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

laws of the Commonwealth of Massachusetts.

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

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

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

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

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

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

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

JURISDICTION AND VENUE

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

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

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

FACTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

44. Article 3 of the Town Meeting Warrant was:

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

property and the forest, water, air, and other natural resources thereon for the use of the public for conservation and recreation purposes to be managed under the control of the Hopedale Parks Commission, and further authorize the Board of Selectmen to take any and all actions and execute any and all documents to carry out the purposes of this article; or take any action related thereto.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(emphasis added).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PRAYER FOR RELIEF

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

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

Respectfully submitted,

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

By their attorneys,

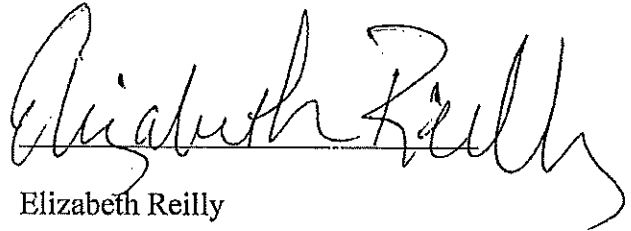


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Dated: March 3, 2021

VERIFICATION


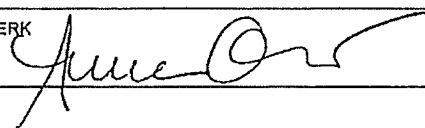
I, Elizabeth Reilly, have read the above Verified Complaint and now state, under the penalties of perjury, that the facts stated therein are true to the best of my personal knowledge and that no material facts have been omitted.

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

Elizabeth Reilly

Dated: 3/3/24

EXHIBIT 22

JUDGMENT ON THE PLEADINGS		Trial Court of Massachusetts The Superior Court	
DOCKET NUMBER 2185CV00238		Dennis P. McManus, Clerk of Courts	
CASE NAME Reilly, Elizabeth et al vs. Town of Hopedale et al		COURT NAME & ADDRESS Worcester County Superior Court 225 Main Street Worcester, MA 01608	
<p>This action came before the Court, Hon. Karen Goodwin, presiding, upon a motion for judgment on the pleadings,</p> <p>After hearing or consideration thereof;</p> <p style="text-align: right;">4/10 *</p> <p>It is ORDERED AND ADJUDGED:</p> <p>Judgment to enter for the Plaintiffs on Count I, enjoining the Board of Selectmen and The Town of Hopedale from purchasing land as set forth in the Settlement Agreement and the Railroad Defendants are enjoined for 60 days from the date of this Judgment from carrying out any work on the contested forest land. Counts II and III are hereby dismissed.</p>			
DATE JUDGMENT ENTERED 11/10/2021	CLERK OF COURTS/ ASST. CLERK X		

Date/Time Printed: 11-10-2021 11:20:54

SCV117: 07/2016

Entered and Copies Mailed 11/10/21

EXHIBIT 23

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 2185CV00238

ELIZABETH REILLY and others¹

vs.

TOWN OF HOPEDALE and others²

**MEMORANDUM OF DECISION ON DEFENDANT TOWN OF HOPEDALE'S
MOTION FOR CLARIFICATION**

Eleven taxpayers residing in the Town of Hopedale ("Town") sued to challenge a Settlement Agreement between the Town and Grafton & Upton Railroad Company ("Railroad"), concerning disputed forest lands. In pertinent part, the Settlement Agreement provided that in exchange for the Railroad voluntarily selling a portion of the forest lands to the Town, the Town would cease efforts to enforce its G.L. c. 61, § 8 Option to purchase the entirety of the forest lands from the original seller. The plaintiffs sought an injunction preventing the Board from purchasing the forest lands under the terms of the Settlement Agreement (Count I); a declaration of the Town's G.L. c. 61, § 8 rights (Count II); and a declaration that the lands were protected parkland pursuant to art. 97 (Count III).

On November 4, 2021, the court allowed the Town's motion for judgment on the pleadings on Count II because the plaintiffs lacked standing to assert the Town's rights. The court also entered judgment in favor of the Town on Count III because the allegations did not plausibly suggest that the lands met the requirements for art. 97 protection. As to Count I,

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

² Louis J. Arcude III, Brian R. Keyes, Jon Delli Priscoli, and Michael R. Milanosky, One Hundred Forty Realty Trust, and Grafton & Upton Railroad Company


Entered and Copies Mailed 12/16/21

however, the court determined that the execution of the Settlement Agreement was procedurally defective because the Board failed to obtain Town Meeting approval for the reduced land acquisition as required by G.L. c. 40, § 14. The court enjoined the Town from purchasing the land unless it obtained such approval.

The Town has requested amendment or clarification of the decision to state that the Town has lost its statutory Option to buy the entire parcel. However, that is not what the court decided. As previously explained, although the terms of the Settlement Agreement are legal (including the Board's agreement to waive the Option), the Board exceeded its authority when it unilaterally entered into that agreement without Town Meeting approval of the reduced acquisition. Therefore, the Settlement Agreement is not effective. The Board might not hold the required Town Meeting or might fail to obtain enough votes to approve the acquisition. In either case, the Settlement Agreement would fail to take effect, meaning that the Railroad would retain the land and the Town would retain its money and the right to continue attempting to enforce the Option.³ Until the reduced acquisition is approved by Town Meeting, the agreement is not effective, and the Town may (but is not required to) attempt to enforce the Option.

³ In its Response, the Railroad argues that because the Settlement Agreement contains a severability clause, a failed Town Meeting vote would mean the Railroad need not sell any land, but the Town is still bound to its the waiver of the Option; in other words, the Railroad gets all the benefits of the agreement and gives up nothing in exchange. This would be unjust, to say the least. See *Carrig v. Gilbert-Yarker Corp.*, 314 Mass. 351, 357 (1943) (contract only severable where it "consists of several and distinct items to be furnished or performed by one party" and "consideration [is] apportioned to each item [separately]"). In a similar case, a panel of the Appeals Court held that where a particular term was the "essence and foundation of [a Land Court] settlement agreement . . . the failure of that consideration [due to a judgment in a subsequent ten-taxpayer action] warranted rescission of the settlement agreement . . ." *Abrams v. Bd. of Selectmen of Sudbury*, 76 Mass. App. Ct. 1128, 2010 WL 175045 at *2 (2010) (Rule 1:28 decision). For this reason, the Railroad's claim preclusion argument misses the mark: while claim preclusion might bar the Town from filing a *new* suit to enforce the Option, the Town could seek rescission of the Settlement Agreement. *Id.* at *2. Moreover, as to *this* suit, claim preclusion would not apply because the plaintiff taxpayers were not parties to the Land Court litigation.

Therefore, the court **DENIES** the Town's motion to the extent it seeks to amend the decision and **ALLOWS** the request for clarification as set forth above.



Karen L. Goodwin
Justice of the Superior Court

DATED: December 14 , 2021

EXHIBIT 24

ORIGINAL

VOL.: I of I
PAGES: 1-26
EXHIBITS: 0

COMMONWEALTH OF MASSACHUSETTS
WORCESTER, SS. SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

* * * * *

REILLY, ELIZABETH ET AL.

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v.

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Docket No. 2185CV00238

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TOWN OF HOPEDALE ET AL.

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* * * * *

MOTION HEARING
BEFORE THE HONORABLE KAREN L. GOODWIN

APPEARANCES:

For the Plaintiffs:

By David E Lurie, Attorney at Law
Lurie Friedman LLP
One McKinley Square
Boston, MA 02109

For the Defendant, Town of Hopedale, et al.:

By Brian Walter Riley, Attorney at Law
KP Law, P.C.
101 Arch St
Boston, MA 02110

For the Defendant, Grafton & Upton Railroad Company, et al.:

By Donald C Keavany, Attorney at Law
Christopher Hays, Wojcik and Mavricos LLP
370 Main St, Suite 970
Worcester, MA 01608

Hampden, Massachusetts
Courtroom 7
February 9, 2022

Written Record Produced By
Spencer Von Jarrett, CET
Approved Court Transcriber

I N D E X

EVENTS

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1 [Case called at 9:15:15 a.m.]

2 [Appearances noted.]

3 THE COURT: If you are not muted, if you could please mute
4 yourselves, because we get some background noise here. And you
5 just unmute yourself before you have to -- you're speaking.

6 So there are a bunch of moving parts here, but unfortunately
7 I don't know that the case here that was in front of me is a
8 moving part any more. So that's something I want to address with
9 the parties.

10 It's my -- I'll just kind of set the stage as to how I --
11 what I understand the situation to be is that I entered a judgment
12 on the pleadings where I said ostensibly that the town didn't have
13 authority to agree to buy a smaller portion of the property from
14 the trust.

15 What then ensued -- and there were a few options I laid out,
16 just kind of a -- I guess, those options, I think, were dicta --
17 there's been some discussion as to what in my decision was
18 dicta -- some options that could potentially be pursued.

19 What the town did is went to land court seeking to reopen the
20 judgment. Because if the land court -- it's a land court
21 settlement that said the town would buy a smaller portion. The
22 judge in the land court declined to do that.

23 In the meantime, there was a motion -- at the end of my
24 decision, I entered an injunction for a certain period of time to
25 allow the town to deal with the change in circumstances that has

1 | been created by my decision. That time period expired. There was
2 | a motion to extend it which I don't believe the railroad opposed
3 | back then. And I did extend it.

4 | **MOTION FOR EXTENSION**

5 | THE COURT: And now we're -- what's in front of me now is a
6 | motion for a further extension until May to give the town an
7 | opportunity to pursue various options. I'm not sure what they're
8 | planning to do.

9 | My problem here -- and I'll be asking the town and then the
10 | adjoining party to address it -- is, I don't think I can do
11 | anything. This case is over as far as I understand it; my case is
12 | over. And I don't feel, unless I'm convinced otherwise, that I
13 | have the authority to extend an injunction.

14 | So let me hear from you first, Attorney -- I understand how
15 | these decisions have put the town in an awkward situation. And it
16 | may have put the 10 taxpayers in the situation of "be careful what
17 | you ask for," in that there's a possibility of ending up with
18 | nothing.

19 | But I'll ask Attorney Riley first to tell me why he thinks I
20 | can do anything here.

21 | **ARGUMENT BY MR. RILEY**

22 | MR. RILEY: Thank you, Your Honor. First of all, we -- I'm
23 | sure I speak for all of us -- we all appreciate the opportunity to
24 | address these issues. I know you've gotten a lot of papers sent
25 | your way in the past few weeks on this.

1 I'll just note upfront, first, that, you know, the original
2 emergency motion to extend this injunction was based in part --
3 well, really two parts. But one was that it didn't sound like we
4 were going to be getting anything from the land court until
5 perhaps sometime in March. Then, obviously, Judge Rubin bent over
6 backwards to accommodate us and gave us a decision just before the
7 end of January instead.

8 The other reason that we went to land court, which is where
9 this all started, was that while calling a special town meeting to
10 see what would happen, there was an option in December and
11 January. Given the, you know, COVID virus situation, that wasn't
12 just a bad idea, it was a public health risk, frankly. Knock on
13 wood, we may be getting closer to a position where the town would
14 be willing to call that meeting. The Board of Selectmen will be
15 at least talking about that in its meeting coming up on Monday.

16 The reason why I still wanted to be heard on this motion --
17 and I certainly understand what Your Honor is saying: that you've
18 given what you thought was the -- your last word on this case a
19 couple of times already and here we are.

20 But the Board of Selectmen is in a very tough position right
21 now. Now, whether that's -- has a legal way out, or it's just a
22 political one, yeah, that's up for debate. But, yeah, this Court,
23 as you know, did make some comments in memoranda of the possible
24 ineffectiveness of the settlement agreements that happened in the
25 land court.

1 And the -- not just the Plaintiffs in this case, but a fairly
2 substantial number of, you know, voters in town who were very
3 passionate on this issue have made it clear that if there was a
4 way to pursue getting all of this land, let's pursue it. And so
5 they, you know, kind of seized on that, you know, "Well, maybe the
6 whole settlement agreement is invalid or ineffective," or whatever
7 the right word might be.

8 And so as a result, if we do call a special town meeting, --
9 I referenced this in the motions -- I think there's a substantial
10 likelihood that the vote to ratify the acquisition of the smaller
11 amount of property will not pass. And I would note, just from
12 personal experience, whenever you have a controversial issue at a
13 town meeting, it's the people who are passionate about it who show
14 up. So that's, you know, -- and so the problem the board has in
15 calling that special town meeting is, you know, if in fact the
16 voters say, "No, we don't want to approve this settlement
17 agreement," or the act of acquiring the land as part of it, we're
18 not quite sure, because the agreement itself wasn't before Your
19 Honor -- wasn't really before Judge Rubin either, as she noted.

20 The board calls a special town meeting, the voters say no,
21 what does that mean for the town? Does it mean there's an
22 argument at least that the settlement agreement is invalid and
23 maybe we have to do something about that? Do we try to get a
24 declaratory judgment that says that, because, you know, neither
25 court really addressed it?

1 But the, you know, the answer to that is really critical,
2 because it changes the landscape for all the parties to this
3 action. But we would need -- you know, even if we do call a
4 special town meeting, that would probably be sometime in mid-March
5 at best to plan for it.

6 So we do feel we need some time to kind of sort of these
7 things out: figure out, you know, what, if any, -- if indeed --
8 and I would ask the Court just for your thoughts on this -- if
9 indeed there is no pass, you know, a special town meeting votes
10 no, well, the agreement is still there; it just means the town
11 doesn't buy the property. Then perhaps, you know -- then perhaps
12 one approach for the board and the town is, "Okay, we're really
13 left with do we want to buy the 65 acres or do we not," versus
14 trying to fight on in one form or another and get this property.

15 But the -- as I say, the board is really kind of in a bind
16 with not knowing what a no vote at special town meeting would
17 mean. And so for that reason, we still feel like we would like an
18 opportunity, without the railroad being able to go and start
19 clearing land again, to try and sort this all out, frankly.

20 I don't know if there's an avenue to address that question
21 before you in superior court. Would we have to go back to land
22 court? We're not quite sure. But that's the basis why I'm
23 still -- would ask the Court to consider my motion.

24 THE COURT: I certainly understand that. And I understand
25 the position the town is in. And I'm sorry to have, in one sense,

1 to have issued a decision that put you in that position, but I
2 felt that that was what was compelled by the law.

3 In an ideal world, I would hope that the railroad would agree
4 to hold off for a little while because there's nothing more
5 permanent than tearing down trees. Those trees have been there
6 for a long time and they're not going to grow back for a long
7 time. And so that, obviously, is something I have no control
8 over.

9 You pointed out, I think, that one of the key things is the
10 settlement agreement itself was not in front of me or in front of
11 the land court. And I read the land court's decision somewhat
12 narrowly in a way, that it said they could not or didn't feel it
13 was appropriate to open the judgment, but kind of left open the
14 possibility of challenging or claiming or filing some type of
15 action, whether it be in land court or in superior court, claiming
16 that the settlement agreement -- I'm not sure if that would be
17 a -- you're the lawyer -- trying -- essentially try to get out of
18 the settlement agreement on a possibility of performance --
19 lack -- I don't know, whatever grounds you would do. And then in
20 conjunction with that action, seeking injunctive relief.

21 But I -- so I understand where the town is, but I still don't
22 see where there's anything live in front of me that would allow me
23 to attach injunctive relief. Although, you know, I feel that that
24 would be fair in a way, I don't think that I can do it. Fair,
25 meaning that -- just looking at the permanency of removal of trees

1 and understanding the town's position of, in a sense, of being
2 between a rock and a hard place.

3 So, those are my thoughts for what they're worth.

4 Let me hear from Attorney Lurie. Would you like to weigh in
5 on this issue?

6 MR. LURIE: Yes, I would, Your Honor. Thank you for the
7 opportunity. So what we're left with here is Your Honor's ruling
8 that the town could seek to enforce its option --

9 THE CLERK: I can't --

10 MR. LURIE: -- or to seek ratification of it at a town
11 meeting and Your Honor's ruling that the settlement agreement is
12 in itself ineffective, but with the risk that the railroad will go
13 forward and never let us continue clearing land. So that would be
14 unjust for the railroad to be able to do that while this -- the
15 Court has already indicated that the settlement agreement is
16 ineffective and that, by implication, their waiver of their
17 Chapter 61 right, the town's waiver, is also ineffective.

18 So the question then is, how do we preserve the status quo
19 until there is some ruling -- which ultimately will have to be
20 made by an appellate court -- that resolves this issue and the
21 apparent inconsistencies with the land court.

22 So our view is that you do have authority to do that that
23 derives from the same authority that you've had in issuing the
24 injunction in the first place. You're keeping the status quo in
25 place until the town has the ability to enforce its option. It

1 has attempted to do that in a timely manner; the land court has
2 said no, not so fast. But the town still has the ability to
3 enforce that.

4 If Your Honor believes that you don't have authority in that
5 respect and that that authority now is solely within the land
6 court, that puts us in a hard position because the land court has
7 denied our attempt to intervene in that case. It's adjoined in
8 the town's motion to vacate. While we plan to appeal that
9 decision, right now we're not in that case. So we have to appeal
10 to you to preserve the status quo pending resolution of this
11 issue.

12 One alternative that we've suggested in our papers that we
13 filed yesterday is a report which we do feel is within Your
14 Honor's jurisdiction, notwithstanding the railroad saying that
15 it's not available because this is an interrogatory matter. And
16 in fact, there is an agreement on all the facts. Your Honor --
17 that's why Your Honor issued a ruling on a motion for judgment on
18 the pleadings: there is no dispute as to the facts. And it's
19 something that's appropriately reported to the appellate court
20 given the inconsistency between Your Honor's ruling and what the
21 land court has said. And the railroad has seized on this apparent
22 inconsistency by threatening the town that it's going to be in
23 breach of contract if it even pursues an appeal. So the issue is
24 right: it should be decided by an appellate court.

25 If Your Honor decides that a report is not appropriate for

1 whatever reason, we would ask you to at least continue this for a
2 few days. The railroad had already indicated, both to you and to
3 the land court, that it would keep the -- it would not alter the
4 land until February 14th, which is next Monday, by which time we
5 would seek to continue the injunction pending our appeal of your
6 ruling which denied our counts 2 and 3, where we sought to enforce
7 the option.

8 Now, I understand Your Honor has ruled that we do not have
9 standing to enforce that under Chapter 214, Section 310 or under
10 Article 97, 214, 7A. We do believe that there is grounds for
11 appeal of that ruling. We also believe that there are public
12 rights at stake that are enforceable via mandamus. We ought to
13 have the opportunity to get an appellate ruling on those issues
14 before the railroad clears its land. And one proper way for you
15 to consider that issue and preserve the status quo is via such a
16 motion to preserve the status quo pending appeal.

17 Bottom line: it's just unjust for the railroad to be able to
18 clear the land, given that the basis on which it purports to clear
19 the land is just -- is not there. And given the procedural
20 quandary that we're in right now, it's got to be preserved until
21 an appellate court can rule whether or not this settlement
22 agreement really is effectively rescinded as Your Honor implicitly
23 found and the stipulation of dismissal that was entered in the
24 land court can be vacated.

25 **THE COURT:** I don't think I rescinded the agreement, because

1 | it wasn't in front of me. So what would I be reporting to the
2 | appeals court? What is live in front of me to report? What
3 | question do I want the appeals court to answer?

4 | I mean, I do think that a consolidated appeal of both this
5 | case -- which I think there's been a notice of appeal by --
6 | perhaps by the town, I don't know if the railroad has appealed it,
7 | probably not, no -- by the town -- that maybe those appeals could
8 | be consolidated in the appeals court. But what would this court
9 | be reporting? Usually, you report something to the appeals court
10 | to decide some disputed issue of law that would then guide a
11 | further decision by the trial court.

12 | MR. LURIE: The issue of law would be whether or not the
13 | settlement agreement is ineffective such that the stipulation of
14 | dismissal pursuant to which the land court case was dismissed is
15 | ineffective and, therefore, the land court case can be -- the town
16 | can enforce its rights.

17 | THE COURT: Let me hear from Attorney Keavany.

18 | **ARGUMENT BY MR. KEAVANY**

19 | MR. KEAVANY: Thank you, Your Honor. And thank you again for
20 | agreeing to hear us today. I'm going to start backwards with
21 | respect to your inquiry and Attorney Lurie's request in his most
22 | recent filing to report this.

23 | The case he cited, Cepeda vs. Kass, 62 Mass. App. 732, has a
24 | footnote that describes the three situations in which a reporting
25 | of a case is appropriate. And this situation we are -- in front

1 of you does not fit into one of those three categories.

2 The only one that I think he cites would be where the whole
3 case is reported for determination at the request by the parties
4 and the agreement is to all material facts. But as noted in
5 footnote three, that only applies when a decision has not been
6 made by the judge. And respectfully, Your Honor, you did make the
7 decision. Judgment entered three months ago, on November 10th.

8 And judgment entered in favor of the 10 taxpayers on count 1.
9 And that enjoined the town from using money that was appropriated
10 in October of 2020 to buy the land in the settlement agreement.
11 Counts 2 and 3 were dismissed.

12 The town was the moving party on this emergency motion. They
13 never asserted any claim against the railroad or the trust. The
14 only count that was asserted against the railroad and the trust
15 was count 2, and that's been dismissed. We did not appeal count
16 2, the only count against us, because it was entered in our favor.

17 The 10 taxpayers have filed appeals of counts 2 and 3, but
18 there's no pending claim against us. And the 10 taxpayers,
19 frankly, I think take great liberties with the judgment that
20 entered and, you know, continue to say things that the judgment
21 doesn't say.

22 Count 1 was a Chapter 40, Section 53 10-taxpayer claim
23 seeking injunctive relief alleging that there was going to be an
24 unlawful expenditure, -- what they believed to be an unlawful
25 expenditure -- and they sought injunctive relief to prevent the

1 town from spending those funds that they believed were -- they
2 were not permitted to do. They succeeded on that, Your Honor.
3 The railroad and the trust were never part of count 1; the town
4 never asserted a claim against the railroad in this Court, in
5 superior court.

6 The only parties to the settlement agreement, Your Honor, are
7 the trust, the railroad, and the town. And as we sit here today,
8 on February 9, 2022, no party has challenged that settlement
9 agreement; no party has sought the -- to rescind that settlement
10 agreement.

11 The town took your decision, your memorandum of decision and
12 order, and took that -- I would say that they took some options
13 that you provided them and they apparently deliberated those two
14 options which would be, "Do we go to town meeting and schedule a
15 vote to acquire the property at the lesser amount of money?", or,
16 "Do we go back to land court and try to vacate the stipulation of
17 dismissal that entered last February and, if successful, pursue
18 our chapter 61 rights?"

19 They chose, they voted -- the board voted and they chose
20 option 2. They chose to go to land court.

21 They filed a motion in land court on December 30 of 2011
22 seeking to vacate the stipulation of dismissal. When we heard
23 back from the land court in early January, Your Honor, it appeared
24 that we would not be heard on that motion until the end of
25 February. That is what motivated the town to come to this -- back

1 to superior court seeking by emergency motion -- seeking to a
2 further extension.

3 And the railroad did agree to initially extend the time to
4 January 31. And we thereafter agreed to extend it to February 14,
5 2022, Your Honor.

6 But the two options that were available to the town: they
7 voted and chose option 2. They voted -- and the land court worked
8 with us and we did an expedited briefing schedule and we had a
9 hearing on January 24th. And the Court issued its decision on
10 January 28th, Your Honor.

11 So the two reasons -- or the primary reason that the town
12 came back to superior court to seek an extension of that
13 injunction that you entered under count 1 was because there was a
14 fear that the land court would not hear their motion before the
15 January 31 deadline.

16 But the court did; the land court did hear the matter and
17 decided the matter, Your Honor. And they decided that matter and
18 the -- certainly, the town is free to move for -- to file an
19 appeal of that land court case. They haven't yet; they're free to
20 do it.

21 But that was a Rule 60(b)(6) motion to vacate, Your Honor.
22 That's an incredibly high standard -- incredibly high burden that
23 the land court found that they did not meet. And I frankly,
24 respectfully, say that I don't think on appeal they'll be
25 successful on that.

1 But nonetheless, we are here today because, as part of their
2 motion to vacate in land court, they sought injunctive relief.
3 And by the denial of the motion to vacate, their request for
4 injunctive relief was denied.

5 So they want to land court -- reading between the -- reading
6 the tea leaves of your decision, they went to land court, "Let's
7 go try to exercise our chapter 61 rights. Let's get an injunction
8 there." Denied.

9 So then they come back to superior court and want you to do
10 what the land court refused to do. And respectfully, as you noted
11 on page 11 of your memorandum of decision, your judgment
12 effectively ends this litigation. And that is true: this case is
13 over. It went to judgment on November 10. You granted the town
14 60 days to decide what to do as a result of the judgment: go to
15 town meetings, go to land court and try to exercise your Chapter
16 61 rights. They've made that decision, Your Honor. The intent
17 and purpose of your 60-day order, which we agreed to extend to
18 January 31, and agreed to extend to February 14th, has been met.
19 The town acted. The town failed; they lost.

20 They have not filed a new lawsuit and I, frankly, -- the
21 purpose of my letter, frankly, was to discourage them from filing
22 another lawsuit because there is an attorney's-fee-shifting
23 provision in that settlement agreement and we would certainly
24 fully defend the settlement agreement. And we think it's fully
25 enforceable with or without the land transfer. And that's the

1 intent of the letter. That -- "be careful about seeking to seek
2 rescission of this agreement because if we prevail, and we think
3 we're going to, we're going to seek attorney's fees." And that is
4 entirely appropriate, nothing inappropriate about it at all.

5 We've been -- as much as my brother accuses us of not
6 listening to orders or abiding by orders, every order that's been
7 issued, we've complied with, Your Honor. And now, we're at the
8 point where enough is enough.

9 They have tried to get injunctive relief in another forum and
10 it was denied and they have no basis. The town certainly has no
11 basis to seek injunctive relief in front of this Court, because
12 they have no claims against us in this Court.

13 We were aligned at the hip in this Court. We fully defended
14 the settlement agreement; they never alleged it was unlawful. The
15 10 taxpayers asserted one count against us and that's count 2.
16 That's been dismissed. There is no legal basis for continuing
17 this injunction any further.

18 And respectfully, Your Honor, if there was even an appetite
19 by this Court to say, "Let's give the town an opportunity to
20 schedule a town meeting" -- even though they've done nothing to do
21 that for 90 days -- but let's say, "Okay, let's have them schedule
22 it in March:" it does not matter, Your Honor.

23 If they vote to approve it, we're obligated to convey the
24 land. If they vote not to approve it, we're still subject to all
25 of the restrictions that are in that settlement agreement that we

1 | agreed to.

2 | We dismissed our STB appeal. We did a lot of different
3 | things pursuant to that settlement agreement that are -- continue
4 | to be enforceable. And if the town fails initially and then they
5 | go back, we're still obligated to sell it to them, Your Honor. We
6 | can't touch that 65 acres of land.

7 | So even if they go back to town meeting and town meeting
8 | votes to approve it, we have to sell it to them. If town meeting
9 | doesn't vote to approve it, we're still subject to a no-touch
10 | rule. We can't go near that 65 acres. So any work we do on 364
11 | Forest -- 364 West Street does not approach that 65 acres, Your
12 | Honor.

13 | And so I respectfully request that the -- they have not met
14 | their burden; they haven't even talked about -- the town hasn't
15 | even talked about establishing a likelihood of succeeding on any
16 | claim.

17 | If they believe that they're entitled to rescind this
18 | settlement agreement, let them go file a lawsuit in superior court
19 | or land court seeking to rescind the settlement agreement. I
20 | discourage them from doing that, but that's the forum: that's the
21 | appropriate place for any further injunctive relief to be
22 | considered by a court.

23 | And so I respectfully request, Your Honor, that the motion be
24 | denied. They have not met the merits establishing entitlement to
25 | any further relief.

1 I do this case think is over, that you have no jurisdiction
2 to enter any additional orders extending the injunctive relief.
3 The reporting of this case to the appeals court is not appropriate
4 because it doesn't fit into the three particular areas that have
5 been identified in the Cepeda v. Kass case.

6 And so I respectfully request that enough is enough. They've
7 done what they could do. They have lost in land court and it's
8 not appropriate for them to, really, do judicial forum shopping to
9 come back to this Court to ask for something that was denied in
10 another court. So I respectfully request that the request to
11 extend beyond February 14th be denied.

12 THE COURT: I'll give Attorney Riley just a brief
13 opportunity, and Attorney Lurie, if they'd like to respond to
14 anything. Attorney Riley.

15 [Indiscernible at 9:43:17 - telephonic distortion]. Where is
16 Attorney Riley? Looks like Attorney Riley has -- oh, he's
17 reentering, so. No, that's not him.

18 Ms. Ramos, can you see Attorney Riley here? Or trying to get
19 in?

20 THE CLERK: Oh, there's someone in the waiting room now, Your
21 Honor.

22 THE COURT: He's in the waiting room?

23 THE CLERK: He must have been bumped off. He's connecting
24 now.

25 THE COURT: Okay. Great. Here he is.

1 MR. RILEY: I'm sorry, Your Honor. I lost the connection on
2 my computer for a few minutes.

3 THE COURT: All right. I'm not sure when you lost it. What
4 I was doing was giving you and Attorney Lurie a very brief -- a
5 chance to briefly respond to anything Attorney Keavany said.

6 **REBUTTAL BY MR. RILEY**

7 MR. RILEY: Well, I guess I would just add that, you know, we
8 feel this is kind of an extraordinary circumstance. And the
9 town -- the board is left deciding whether to address the
10 residents and say, you know, "This is our only option, to purchase
11 this property," versus, you know, there may be grounds to try and
12 enforce and acquire all the property which is what the -- you
13 know, almost a year and a half ago now -- but the residents are
14 overwhelmingly in support of.

15 And, you know, we understand we're left with the judgments
16 that we've received from the Court. But all I'm asking is that,
17 you know, to the extent Your Honor can answer that question I
18 had, -- about what happens if the town meeting votes no regarding
19 the settlement agreement -- we're just looking for a little more
20 time and preserving the property while we try and see if we can
21 get to that answer.

22 THE COURT: Attorney Lurie, anything that you would like to
23 add?

24 **REBUTTAL BY MR. LURIE**

25 MR. LURIE: Yes, Your Honor. Very quickly, first of all,

1 while Attorney Keavany says they're not going to touch the 65
2 acres -- you know, 25 of that is wetlands -- the vast majority of
3 the forest land is at issue. You've already seen the effects of
4 the railroad's altering of that. We can't let that continue to be
5 altered while this matter is still being adjudicated in the
6 courts.

7 The second thing: I disagree with Attorney Keavany about
8 whether or not a report is appropriate. But the prong where there
9 is an agreement as to material facts is satisfied here. The fact
10 that you've already issued a decision on the motion for judgment
11 on the pleadings does not preclude your reporting this
12 inconsistency between your ruling and the land court ruling to the
13 appellate courts.

14 And finally, you do continue to have jurisdiction over this
15 case in the context of an injunction pending on our appeal and it
16 would be entirely appropriate for you to give us the opportunity
17 to explain why the injunction should be continued while we seek
18 appellate resolution which we're prepared to do by Monday if the
19 Court requires that.

20 MR. KEAVANY: Your Honor, may I just briefly be -- real
21 briefly be heard?

22 THE COURT: Very briefly.

23 **SURREBUTTAL BY MR. KEAVANY**

24 MR. KEAVANY: Very briefly. No, no. It is very briefly.
25 Again, there's no -- we keep on hearing inconsistencies. There

1 are no inconsistencies. If the land court said the settlement
2 agreement wasn't before her -- and the settlement agreement wasn't
3 before you. What was before the land court was a motion to vacate
4 under Rule 60(b)(6). What was before you was a request for an
5 injunction under Chapter 40 Section 53 to enjoin the payment of
6 funds from October of 2020 to buy the land described in the
7 settlement agreement. So there are no inconsistencies to be
8 reported. So -- and again, I refer to you footnote 3 of that
9 decision that my brother cited, Cepeda v. Kass, that is
10 dispositive of whether it's an appropriate case to report. Thank
11 you.

12 FINDINGS

13 THE COURT: So, number one, I don't think I have anything to
14 report. I think the fact that this has gone to judgment really
15 precludes me from sending anything up to the appeals court, even
16 though -- I mean, Attorney Riley just -- Attorney Riley came off.
17 Let me wait for a minute.

18 THE CLERK: He's reconnecting now.

19 THE COURT: Okay. Are you with us, Attorney Riley?

20 MR. RILEY: I am. I'm not sure what the problem is. But I'm
21 back.

22 THE COURT: Okay. So I was just indicating that I don't
23 think I have any authority. I don't think any of the grounds for
24 a report to the appeals court applies here.

25 I'd also like to remark that in kind of setting out three

1 potential options to the town as a result of my decision, I did
2 not mean to say that those were the only things the town could do.
3 Obviously, I'm not the town's lawyer, I was just trying to make
4 the point that I understood that my decision kind of left things
5 in limbo and I was, you know -- maybe I should not have said
6 anything about what the town could do. But I believe there are
7 probably a number of different things that you can do and I'm not
8 going to opine about those here today; that wouldn't be
9 appropriate, I don't think.

10 As far as what Attorney Lurie was saying with an injunction
11 pending appeal, no such motion is front of me, I don't think. If
12 a motion -- if an appeal does get filed and there's a motion
13 pending appeal, I'll have to ask on it. I don't think, though,
14 with respect to -- you know, just kind of talk off the top of my
15 head, but I will look at it carefully if it comes in front of me.

16 But I don't see that there is much likelihood of success on
17 the merits on the taxpayer's claim against counts 2 and 3. But
18 then, of course, the taxpayers could then go to the appeals court
19 and seek a stay.

20 So those options -- appeals and motions to stay pending
21 appeals -- are on the table, other options are on the table, I'm
22 not really sure. And I really do understand the quandary the town
23 is in. But I'm kind of throwing my hands up. I don't think I can
24 do anything here.

25

RULING

1 THE COURT: So I am going to deny the motions to extend the
2 injunction. I'm just going to do it with a marginal endorsement.
3 And if the parties need the grounds set forth, I can have my
4 comments here transcribed.

5 Anything else, Attorney Riley?

6 MR. RILEY: No. That addresses me, Your Honor.

7 THE COURT: Attorney Lurie?

8 MR. LURIE: No, Your Honor. Except to, I would ask that you
9 either order or ask the railroad to agree to confirm that no work
10 will begin at least before Monday to give us an opportunity to
11 file the motion that we were describing.

12 THE COURT: Attorney Keavany?

13 MR. KEAVANY: Your Honor, so I have to get confirmation from
14 my client. But I will certainly represent to you I will not
15 advise them not to do anything, even though the spirit of my
16 agreement or my client's agreement to extend the February 14th
17 was, really, because we weren't expecting the land court's
18 decision before the 14th. But nonetheless, today is the 9th. I
19 will talk to them and recommend and advise. And I can report back
20 to you, Your Honor, through the clerk, their decision on that.
21 But I expect that they will agree to do that.

22 THE COURT: Okay. Very good.

23 MR. RILEY: Thank you.

24 THE COURT: Thank you, all. And thank you for all the
25 taxpayers for being present at this hearing.

1 MR. LURIE: Thank you.

2 MR. KEAVANY: And representatives of the railroad and of the
3 trust are here as well, Your Honor.

4 THE COURT: Yeah, I appreciate that. It's always good when
5 parties are interested in the case, even if they're not getting
6 good news.

7 MR. KEAVANY: Absolutely. Thank you.

8 THE COURT: Thank you.

9 MR. LURIE: All right. Thank you, Your Honor.

10 MR. RILEY: Thank you.

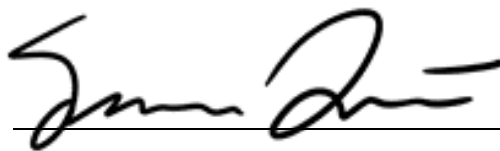
11 [Adjourned at 9:51:37 a.m.]

C E R T I F I C A T I O N

I, Spencer Von Jarrett, an Approved Court Transcriber, do hereby certify that the foregoing is a true and accurate transcript of the audio recording of the above-entitled matter provided to me in the form of an electronic sound recording.

I, Spencer Von Jarrett, further certify that the foregoing is in compliance with the Administrative Office of the Trial Court Directive on Transcript Format.

I, Spencer Von Jarrett, further certify that I neither am counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken, and further that I am not financially nor otherwise interested in the outcome of the action.



February 15, 2022

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The Commonwealth of Massachusetts
OFFICE OF COURT MANAGEMENT, Transcription Services

AUDIO ASSESSMENT FORM

TODAY'S DATE: February 15, 2022 **TRANSCRIBER NAME:** Spencer Von Jarrett

CASE NAME: REILLY, ELIZABETH ET AL. v. TOWN OF HOPEDALE ET AL.

DOCKET NUMBER: 2185CV00238

RECORDING DATE: February 9, 2022 **TRANSCRIPT VOLUME:** I OF I

TYPE: FTR JAVS **QUALITY:** EXCELLENT GOOD FAIR POOR

ISSUES: **Time stamp(s) of indiscernible word(s):**

background noise

low audio

low audio at sidebar

simultaneous speech

speaking away from mic.

other: telephonic distortion **9:43:17**

COMMENTS: Although this was an entirely virtual hearing and the audio quality was very poor, the participants did a great job of speaking in their turn and clarifying the record when needed. Only one utterance of the judge was indiscernible.

#

1 [5] 13, 8; 13, 22; 14, 3; 15, 13; 25, 21;
10 [6] 4, 16; 13, 8; 13, 17; 13, 18; 16, 13; 17, 15;
10-taxpayer [1] 13, 22;
10th [1] 13, 7;
11 [1] 16, 11;
14 [1] 15, 4;
14th [5] 11, 4; 16, 18; 19, 11; 24, 16; 24, 18;
2 [9] 11, 6; 13, 11; 13, 15; 13, 16; 13, 17; 14, 20; 15, 7; 17, 15; 23, 17;
2011 [1] 14, 21;
2020 [2] 13, 10; 22, 6;
2022 [2] 14, 8; 15, 5;
214 [2] 11, 9; 11, 10;
24th [1] 15, 9;
25 [1] 21, 2;
28th [1] 15, 10;
3 [5] 11, 6; 13, 11; 13, 17; 22, 8; 23, 17;
30 [1] 14, 21;
31 [3] 15, 4; 15, 15; 16, 18;
310 [1] 11, 9;
364 [2] 18, 10; 18, 11;
40 [2] 13, 22; 22, 5;
53 [2] 13, 22; 22, 5;
60 [1] 16, 14;
60(b)(6) [2] 15, 21; 22, 4;
60-day [1] 16, 17;
61 [4] 9, 17; 14, 18; 16, 7; 16, 16;
62 [1] 12, 23;
65 [5] 7, 13; 18, 6; 18, 10; 18, 11; 21, 1;
732 [1] 12, 23;
7a [1] 11, 10;
9 [1] 14, 8;
90 [1] 17, 21;
97 [1] 11, 10;
9th [1] 24, 18;

A

abiding [1] 17, 6;
ability [2] 9, 25; 10, 2;
able [3] 7, 18; 9, 14; 11, 17;
absolutely [1] 25, 7;
accommodate [1] 5, 6;
accuses [1] 17, 5;
acquire [2] 14, 15;

20, 12;
acquiring [1] 6, 17;
acquisition [1] 6, 10;
acres [5] 7, 13; 18, 6; 18, 10; 18, 11; 21, 2;
act [1] 6, 17;
acted [1] 16, 19;
action [3] 7, 3; 8, 15; 8, 20;
add [2] 20, 7; 20, 23;
additional [1] 19, 2;
address [5] 3, 8; 4, 10; 4, 24; 7, 20; 20, 9;
addressed [1] 6, 25;
addresses [1] 24, 6;
adjoined [1] 10, 7;
adjoining [1] 4, 10;
adjourned [1] 25, 11;
adjudicated [1] 21, 5;
advise [2] 24, 15; 24, 19;
against [8] 13, 13; 13, 14; 13, 16; 13, 18; 14, 4; 17, 12; 17, 15; 23, 17;
ago [2] 13, 7; 20, 13;
agree [5] 3, 13; 8, 3; 15, 3; 24, 9; 24, 21;
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COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

* * * * *

REILLY, ELIZABETH, et al.

* Docket No. 2185CV00238

v.

TOWN OF HOPEDALE, et al.

* * * * *

MOTION HEARING
BEFORE THE HONORABLE KAREN L. GOODWIN

APPEARANCES:

For the Plaintiffs, Hopedale Citizens:

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Worcester, Massachusetts
Remote Proceeding
May 3, 2022

Proceedings recorded by Court Personnel.
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1 (Court called to order.)

2 (9:38 a.m.)

3 THE CLERK: This is the matter of Elizabeth Reilly vs. the
4 Town of Hopedale, 2185CV00238. Before we get started, if you're
5 not going to be participating in the hearing, if you're just
6 kind of listening in, please leave yourself on mute. The only
7 ones that should be speaking would be the attorneys. So if the
8 attorneys could please identify themselves for the record,
9 Plaintiff's counsel first.

10 MR. LURIE: Good morning, Your Honor. David Lurie for the
11 Plaintiff, Hopedale Citizens.

12 THE COURT: Good morning.

13 MR. RILEY: Your Honor, Brian Riley with Town Council's
14 Office on behalf of the town and the Select Board.

15 THE COURT: Okay. Morning.

16 MR. KEAVANY: And good morning, Don Keavany with my
17 associate, Drew DiCenzo, on behalf of Grafton Upton Railroad
18 Company, Michael Milanoski, and Jon Delli Priscoli, Trustees of
19 140 Realty Trust.

20 THE COURT: Okay. So what I'd like to do is first just
21 give the parties a quick outline of where I understand things
22 stand, and then I would like to be corrected where I have it
23 wrong and get a little better understanding at least of the
24 posture of the case. And then I'll hear the substantive
25 arguments as to why I should issue this injunction pending

1 appeal.

2 So I issued this decision back in November essentially
3 finding for the town on Count 1 that the -- excuse me, for the
4 taxpayers on Count 1 that the town lacked authority to buy this
5 smaller parcel of land. I found for the Defendants on Count 2
6 and 3, and it seems to me that at least it seems like it's
7 Counts 1 and Counts 2 that are really the ones in play here in
8 terms of the appeal.

9 So what happened then was that the town went into the Land
10 Court to try to get out, essentially, of the settlement
11 agreement, but it wasn't -- it was not the -- the request to the
12 Appeals Court was not so much to void the settlement agreement
13 as to reopen the judgment because the case was settled by way of
14 a dismissal with prejudice as opposed to some type of
15 incorporation of the terms of the settlement agreement.

16 The Land Court said no and then I guess the town appealed.
17 I don't have all this clear in my mind. The town appealed. I'm
18 shortening some of the things, and then went to the Land Court
19 to seek an injunction pending appeal -- pending their appeal
20 with the Land Court decision, which the Land Court denied. That
21 was appealed up to the Appeals Court, and the Appeals Court
22 denied it -- I mean affirmed what the Land Court has done, which
23 then essentially reactivated in the Plaintiff's -- for the 10
24 taxpayers, they had filed their motion to -- for a stay pending
25 appeal in this Court a while ago, but we'd put it on hold

1 because all the stuff was going on in the Land Court that it was
2 thought might obviate this Court from having to address the
3 issue.

4 But now it's back in my Court in front of the Superior
5 Court with the taxpayers' claim that there should be an
6 injunction pending appeal. And it sounds like from some of the
7 stuff I've read that there are a few other things that have gone
8 on that the -- but I'd like to be brought up to date on that in
9 that the town has withdrawn its appeal of the Land Court
10 decision. So I wanted to find out the status of that, and I
11 wanted to know if there are any other moving parts in this
12 litigation, at this point, other than this case?

13 So --

14 (Simultaneous speech.)

15 UNIDENTIFIED SPEAKER: Your Honor, if I may?

16 (Simultaneous speech.)

17 MR. RILEY: I'll just comment on a couple of things. One,
18 your summary was very good, but I need to correct one thing.
19 You found in favor of the taxpayers on Count 1 and the town did
20 not appeal that.

21 THE COURT: Correct.

22 MR. RILEY: So it's only Counts 2 and 3 that are under
23 appeal by the taxpayers at this time.

24 THE COURT: Oh, okay. Counts 2 and 3 are under appeal by
25 the taxpayers, not by the town, though?

1 MR. RILEY: Correct.

2 THE COURT: Okay.

3 MR. RILEY: That's correct. But you're correct, after
4 receiving the recent decision from the Appeals Court to not
5 overturn the Land Court's decision, to not overturn Judge
6 Rubin's decision not to, you know, grant an injunction, the
7 Select Board did vote to drop the appeal basically thinking that
8 it had gone far enough on a case that we weren't going to win,
9 and so that has been withdrawn. And I believe Judge Rubin just
10 granted that yesterday or the day before. So that case and
11 appeal is done.

12 THE COURT: Okay. Thank you.

13 MR. LURIE: And Your Honor, we weren't given an opportunity
14 to either oppose that motion for voluntary dismissal in the Land
15 Court or to have a hearing on it. We received an order
16 yesterday that the Court had treated that motion as if it were a
17 stipulated dismissal between the town and the railroad. We're
18 going to move for reconsideration of that, both because we
19 didn't get a chance to weigh in.

20 We also think that it's -- it's inappropriate under the
21 standards for voluntary dismissal given that our appeal of the
22 Land Court case will be going forward. And also, because the
23 Land Court's rationale for previously denying our request for
24 intervention was that the town would adequately represent the
25 taxpayers' interests post-judgment, and that's clearly not the

1 case.

2 THE COURT: Okay. And when I turn to you in a minute,
3 Attorney Lurie, maybe you can also clarify how you can appeal a
4 decision in a case in which you're not a party in a Land Court
5 case, and maybe you're appealing the decision not to let you be
6 a party, but I'll let you address that in a minute.

7 I'm just going to make one request as I hear the arguments.
8 The papers have been pretty -- a lot of slings and barbs being
9 thrown by both sides at each other, and I'm talking about with
10 respect to the taxpayers and the railroad. And it is
11 distracting, and I think that if the focus of this hearing could
12 be not on what the other parties have done wrong in their
13 filings, but on the issues that are in front of the Court as far
14 as this injunction goes, I think that would be helpful to me.

15 So let me turn to you, Attorney Lurie, and just since we
16 were talking about the Land Court case, although that's not in
17 front of me, it is a backdrop to what's going on here, and maybe
18 you can indicate what the status is with respect to you
19 taxpayers' appeal of that Land Court case and taxpayers attempt
20 to intervene in that case.

21 MR. LURIE: So we are appealing the denial of our motion to
22 intervene. We're appealing the denial of the town's motion to
23 vacate the judgment and our joinder of that motion. If the
24 Court doesn't grant our motion for reconsideration of dismissal
25 of appeal, we will likely amend our notice of appeal to appeal

1 that as well. The record has been assembled. The case has not
2 yet been entered in the Appeals Court, but we plan to do that
3 within a couple days.

4 The appeal of your decision on Counts 2 and 3 has been
5 docketed, has a docket number in the Appeals Court. Our brief
6 is due. Our opening brief is due two weeks from today. We plan
7 to move to consolidate the two appeals so that they can be heard
8 together because they do have related issues.

9 One small correction to your factual summary, which I think
10 generally was very accurate, is that technically we did not
11 appeal the Land Court's denial of the motion to preserve the
12 status quo pending appeal. We instead moved for a stay from the
13 Appeals Court pursuant to Mass Rule of Appellate Procedure 6.
14 So, you know, it wasn't a 231 118 paragraph 1 appeal of the Land
15 Court's decision.

16 THE COURT: It was the (indiscernible -- unclear speech) of
17 the Appeals Court to stay it on their own after you've gone to
18 the lower court and been unsuccessful, right? Is that --

19 MR. LURIE: Yes.

20 THE COURT: Okay. Is there really any difference between
21 the two in substance?

22 MR. LURIE: No.

23 THE COURT: Okay. Okay. So the irreparable harm is pretty
24 clear to the Court, and so I don't know that you need to focus
25 on that. Maybe from the railroad standpoint, I'd like to hear

1 what their view is of that on that issue. But so if you can
2 focus on the likelihood of success on the merits, and I know
3 that you did -- you being the taxpayers, did submit a lot of
4 materials with respect to the irreparable harm not only in terms
5 of chopping down the trees, but the impact that that will have
6 on various town, you know, water or other types of things.

7 So actually, I'd like the town to weigh in a little bit if
8 they feel that's appropriate after you, Attorney Lurie, on this
9 issue of irreparable harm as far as town infrastructure and the
10 like. But let's talk about the likelihood of success on the
11 merits first, Attorney Lurie.

12 MR. LURIE: Okay. If I just might on one additional
13 point --

14 THE COURT: Of course.

15 MR. LURIE: -- Your Honor, as we speak the railroad is
16 clearing the land. It's been doing that for the last two weeks.
17 It's -- it's raising it. It's got big heavy equipment out
18 there. We had aerial drone footage taken over the last couple
19 days. It just came in yesterday. The scope of destruction is
20 graphic. So that's why it's important that we, you know,
21 discuss this right now.

22 THE COURT: But one other thing that has troubled me all
23 along in this case, and I know that because it's criticized or
24 it was commented on in Mass Lawyers Weekly that I didn't really
25 address it, but I didn't think it was in front of me, and maybe

1 you can -- anyone can address this as you make your arguments.
2 But what the railroad did early on in this process after the
3 town, at least my understanding of it, after the town indicated
4 that it wanted to exercise its option, the railroad purported to
5 buy a "beneficial" interest in the land, and then proceeded to
6 chop down the trees, which then led to the Land Court action.

7 It doesn't seem that that action by the railroad has been
8 teed up for challenge anywhere in any court, so has it been?
9 And does it make any difference to the whole case that that's
10 kind of what set this whole thing off?

11 MR. LURIE: I think it matters tremendously, Your Honor,
12 and that is -- (coughs) excuse me -- a get segue into the merits
13 of this appeal. So the town went in for that motion for
14 preliminary injunction to stop that clearing. And the Land
15 Court denied that motion for preliminary injunction in part
16 because the railroad said it would stop that work, and then the
17 case settled. So that issue has never been addressed on the
18 merits.

19 But the reason why it matters for us very much today is
20 because as you indicated in one of your orders, that purchase of
21 the beneficial interest was a sale in violation of Chapter 61
22 before the 120-day period expired, before the town had the
23 opportunity to exercise its option. And why that matters is
24 because the railroad was a third party. It was a punitive buyer
25 of the land. And it could have acquired -- it could not have

1 acquired the land by an assignment from the town of its rights.
2 Because under Chapter 61, the only assignment can be made by
3 a -- a board selectman can choose to do that to a nonprofit
4 conservation organization who agrees to maintain 70 percent of
5 the land as forest land.

6 So if an assignment had been entered into, at that point it
7 would have been illegal. So what the railroad did instead is it
8 tried to circumvent the statute by buying the beneficial
9 interest. And now it claims it's the owner. So the waiver
10 under the settlement agreement is not really an assignment; it's
11 just simply a transaction between the town and the owner, their
12 argument goes. And always the town can waive its Chapter 61
13 option with respect to an owner at the beginning of this
14 process, but that ignores that the railroad purchased this
15 interest illegally.

16 THE COURT: But where is that going to be -- who's going to
17 decide that issue and how is it going to -- how is that going to
18 be -- is that going to be something that's going to be the
19 subject of your appeal of my order? How is that going to be
20 addressed by anybody?

21 MR. LURIE: We're going to be bringing that to the Appeals
22 Court. I don't think the facts are disputed with respect to
23 that.

24 THE COURT: Mr. Lurie, was that issue in front of me? Is
25 it the taxpayers' position that that issue was in front of me

1 and I didn't decide it so I should have, and that the Appeals
2 Court, if it decides that what the railroad did was illegal,
3 then you might have a -- you know, I'm just trying to figure out
4 how that can be -- where that issue is going to come
5 into -- other than background, where is that issue teed up?

6 MR. LURIE: Well, I do think it's an important fact for our
7 argument about the assignment. I mean, the fact that the
8 railroad tried to circumvent the statute rather than getting an
9 assignment of the town's right, instead it bought a beneficial
10 interest in violation of the statute's prohibition on doing that
11 within the 120 days means that it shouldn't now be able to say
12 oh, it wasn't really an assignment because --

13 THE COURT: No. I understand that. But where is
14 that -- where was that addressed in the lawsuit that the
15 taxpayers brought which decision brings us here today? That's
16 what I'm struggling with is how is the Appeals Court going to
17 have the opportunity to weigh in on whether that was legal or
18 not?

19 MR. LURIE: Well, we did argue that in our papers as part
20 of the motions for judgment on the pleadings. We did argue that
21 as part of our argument about the illegal assignment being in
22 violation of the statute. I would think that the Appeals Court
23 could make a ruling on that on their own based upon the
24 undisputed facts. They could say yes, it's clear from the
25 undisputed facts in the record that the railroad did

1 indeed -- this was a sale.

2 This was a sale governed by the statute, and that means
3 that they are not -- it's a nullity. The case law stands for
4 that. And as the result of that being a nullity, they stand in
5 position of a third party, and that this waiver that they're
6 attempting to claim, you know, protects them is really an
7 assignment in violation of the statute.

8 THE COURT: So how does the taxpayers have standing to
9 assert that, which is the decision I made on your Count 2 in not
10 reaching perhaps the issue that we're talking about right now?

11 MR. LURIE: Well, we have standing in two ways with respect
12 to that claim, Your Honor. And one basis for standing is
13 mandamus. We're claiming that the statutes prohibition against
14 assignments to profit-making entities was violated here by the
15 town and the railroad. And that is a classic example of
16 something where taxpayers do have standing by mandamus to
17 protect public rights and lands. Who else would be able to
18 complain about that? If the town and the railroad together
19 believe that it was not a statutory violation, someone has to be
20 able to say that.

21 And that is what has happened in the various cases that we
22 cited. For example, the Mount Greylock case where the Mount
23 Greylock Reservation area was being operated in a way that was
24 beyond the statutory constraints, taxpayers were able to obtain
25 a declaration that it exceeded the scope of the authority

1 granted and was in violation of the statute. Same thing with
2 respect to the Walden Pond case that we cited.

3 So I think that's pretty clear, actually, Your Honor, with
4 respect to the statutory violation. The claim is that the
5 contract is void. The waiver clause is void under Chapter 61,
6 Section 8 and taxpayers have standing by mandamus to assert
7 that.

8 We believe we also have standing under Chapter 40, Section
9 53 because in conjunction with spending money under the
10 settlement agreement, we are also able to raise the related
11 aspects of the transaction are illegal. And courts have upheld
12 standing in that respect. One example is the Appeals Court case
13 in Oliver vs. Mattapoissett where because the court found that it
14 was -- potentially involved municipal expenditures, they went on
15 to rule that on the issue of whether or not a transfer of
16 easements was governed by a majority vote or a two-thirds vote.

17 So the both of those bases are standing. Now, Your Honor
18 didn't directly address those because I believe you were focused
19 on our claim that we, the taxpayers, have the right to enforce
20 the option, even though the town in its judgment chose not to.
21 And that's, I believe, what, you know, why you denied our Count
22 2. But our Count 2 also sought (indiscernible -- unclear
23 speech) relief with respect to Chapter 61, and this is one
24 issue. Is the waiver on its own legal or not?

25 And the appeals -- the single justice's decision in the

1 Land Court doesn't address that. You know, we believe -- we
2 respectfully disagree with the single justice decision. We
3 think that Your Honor's decision that the board was acting in an
4 ultra vires way in spending money invalidates the entire
5 settlement agreement. That will be resolved on appeal of the
6 consolidated appeals as well.

7 But focusing now just on the waiver, that is a reasonable
8 appellate issue that ought to be resolved by the Appellate
9 Courts and it warrants preservation of the status quo pending
10 that appeal, Your Honor. It's in the public interest as you've
11 seen from the affidavits that we've submitted from the multiple
12 town board chairs with respect to that, and it's important, and
13 we're going to try to do this as fast as possible. Our brief is
14 due within two weeks in the Appeals Court.

15 Once we can get the cases consolidated, we're going to move
16 for a consolidated hearing. The railroad has essentially been
17 enjoined already for most of the last year and a half from doing
18 this work, but in the last two weeks, they've accelerated the
19 work. They worked all weekend clearing trees, bringing in heavy
20 machinery. If you look at this aerial video footage, it shows
21 football field-size swaths of land laid bare with piles of
22 trees, you know, mounded up next to it.

23 So if we don't get the status quo preserve pending appeal
24 right now, nothing will be left if and when we win this case,
25 and it's for that reason we're here, Your Honor.

1 THE COURT: Okay. Does the town want to weigh in on
2 anything before I turn to the railroad because the town's
3 position is kind of, you know, I would say not sided with the
4 railroad, not sided with the taxpayers, so what's the town's
5 view on the irreparable harm to the town by the actions taken by
6 the railroad?

7 MR. RILEY: Well, Your Honor, I'll weigh in on a couple of
8 points there. As far as the issue you just cited of, you know,
9 how, you know, who was ever presented with the validity of this,
10 you know, transfer that the railroad and the trust did, I mean
11 that was the heart of the Land Court case that the Select Board
12 files. However, Judge Rubin pretty much immediately sent the
13 parties off to mediation, was concerned that between the Land
14 Court and the Surface Transportation Board, you know, what was
15 going to happen was uncertain at best and the parties should sit
16 down and try to work something out.

17 After two long days, they reached a settlement agreement
18 which did -- as part of it, the Board agreed to waive the
19 Chapter 61 rights, and that, you know, that pretty much
20 terminated that issue. That was purely a Select Board decision.
21 Your Honor, I believe found that and the judgment you entered in
22 this case.

23 And so, I mean, I don't think anyone can argue that cutting
24 down trees is irreparable harm to where the tree was, but this
25 has all been, you know, this has all been litigated and settled

1 between the parties. And the Land Court and the Appeals Court
2 both have pretty much said, you know, that's a done deal. And
3 that's why we decided not to pursue the appeal in the Appeals
4 Court on the Land Court matter any further.

5 And basically in the terms of the settlement agreement, the
6 Select Board felt that, you know, all things considered,
7 pursuing lengthy costly litigation in two different venues at
8 the same time with an uncertain outcome was not in the town's
9 best interest, and that's what led to the settlement agreement.
10 So I'm not, you know, sidestepping the irreparable harm, but,
11 you know, the town is sort of beyond that.

12 And just as you mentioned, you know, I'm not here
13 advocating for an injunction pending the Plaintiff's appeal.
14 I'm not here opposing it either. We did talk about that the
15 last board meeting, and frankly, I think it would be
16 hypocritical if I were coming in and saying we would like to see
17 an injunction entered because Counts 2 and 3 that are on appeal,
18 I spent the whole time, and before you, arguing that there's no
19 merit to Counts 2 and 3, and frankly in your judgment, you
20 agreed with my argument. So I don't think I can come in and say
21 well, now we think an injunction could enter because there's a
22 likelihood of success on the merits from the Plaintiff's appeal.
23 I'd be arguing out of both sides of my mouth if I did that and
24 that's not what I'm here for.

25 So, you know, we don't oppose the Plaintiff's, you know,

1 motion here today. They can make their case and you can
2 consider it, but we, you know, that's why we didn't join it or
3 file our own as well.

4 THE COURT: Okay.

5 MR. RILEY: So I hope that answers your question.

6 THE COURT: Yup. That's very helpful. Let me hear from
7 you, Attorney Keavany.

8 MR. KEAVANY: Thank you, Your Honor. And I think just
9 picking up where Attorney Riley, the first point he made in
10 answering to your first question, the whole issue of whether the
11 manner in which the railroad acquired the beneficial interest in
12 the trust was absolutely front and center at the heart of the
13 Land Court case that the Town of Hopedale brought in 2020. It
14 was fully adjudicated by the stipulation of dismissal. That
15 claim was fully adjudicated on the merits. That issue was
16 resolved by the Land Court judgment and by the dismissal of the
17 appeal that the town filed. So that issue was absolutely
18 litigated. It was disposed of, and again, adjudicated on the
19 merits in the Land Court front and center. That was the heart
20 of the Land Court case.

21 With respect to what we're here for today is really Count 2
22 and, you know, the 10 taxpayers seem to conflate or -- the whole
23 argument is -- well, two things. One is they say you did not
24 address Chapter 40, Section 53 in your decision. But you did on
25 page 9. You said, "Although Chapter 40, Section 53 gives 10

1 taxpayers a right of action to prevent a municipality from
2 illegally spending or raiding funds, as in Count 1, it does not
3 follow that they have the right of action to compel the town to
4 spend the funds." So you did address Chapter 40, Section 53 in
5 your memorandum of decision and the judgment that entered in
6 November in favor of the GNU and the town on Count 2.

7 What's left, Your Honor -- and Chapter 40, Section 53, I'm
8 not going to cite all the cases or repeat all the cases that we
9 did cite in the many briefs that have been filed in this case,
10 but it is very limited with respect to jurisdiction of
11 10 -- with respect to 10 taxpayers, and they do not -- now, they
12 do not have standing under 40, 53 to assert that a right of
13 first refusal that is owned by the town that can only be
14 exercised by the Board of Selectmen. They don't have standing
15 to force the Board of Selectmen to act in a particular manner
16 with respect to the exercise or refusal to exercise a right of
17 first refusal under Chapter 61.

18 What's left, really, Your Honor, is the mandamus section.
19 And mandamus in this case, again, requires a
20 discretion -- scratch that.

21 Requires a mandatory nondiscretionary act by the town. In
22 the cases my brother cited, you know, the Walden Woods case and
23 the Greylock case, there was no discretion that the town had.
24 The town was violating specific orders, specific obligations it
25 had. In this case, Your Honor, as you pointed out,

1 chapter -- and again, it's not disputed, Chapter 61, Section 8,
2 and whether to exercise or not exercise a right of first refusal
3 is a discretionary act. And that discretion can only be
4 exercised by the Board of Selectmen.

5 So even if the 10 taxpayers had standing under mandamus,
6 and I don't concede that they do, but even if they did, mandamus
7 is inappropriate here, Your Honor, because again, the exercise
8 or not exercise of a 61 Section 8 right of first refusal option
9 is absolutely, unequivocally a discretionary act. So mandamus,
10 on its face, cannot apply to a discretionary act. The 10
11 taxpayers try to get around that by equating a recording of a
12 notice of exercise with an easement or a property transfer.

13 But by voting to exercise initially the Chapter 61 right,
14 that did not convey a property interest to itself. And by
15 releasing the Chapter 61 claim, it did not convey a property
16 interest to the railroad or to the trust or to anybody. He
17 recorded a notice which is similar, as I pointed out in my
18 initial papers, recording that the registered deed does notice
19 to the world that hey, third party, if you are interested in
20 buying this property, the town has a right to buy it under
21 Section 8 and is pursuing its right to do so.

22 But that does not mean that the town and really the board
23 has the obligation to follow through. The board can change its
24 mind, and that's what the board did here, Your Honor. It
25 changed its mind, and it released the Chapter 61, Section 8

1 right of first refusal, which was always contested, Your Honor,
2 in the Land Court. That again -- that was the sole issue is
3 Chapter 61, Section 8, and how the railroad acquired its
4 beneficial interest, and whether the town's exercise or not
5 exercise of Chapter 61 was valid and right. And that was,
6 again, fully adjudicated in the Land Court.

7 All that's left in this Court, all that's before you, Your
8 Honor, is whether or not the 10 taxpayers have standing to
9 override a discretionary act that the Board of Selectmen made as
10 it relates to the waiver. The single justice, you know,
11 recently, last week, two weeks ago, you know, in denying the 10
12 taxpayers and the town's motion for an injunction pending
13 appeal, I think summed it up perfectly. To the extent the town
14 wished to recognize the benefit of the settlement agreement, it
15 had the opportunity to do so by vote of town meeting.

16 In other words, the Select Board was authorized to settle
17 the matter and did so. And that's what the town did. They were
18 authorized to do it, and they did so. And they did that through
19 the Board of Selectmen who was the only entity that had the
20 authority to resolve these claims, Your Honor, so --

21 THE COURT: Let me ask you something. I know I'm
22 interrupting you, but something that's been -- it's kind of the
23 conundrum in some ways that the Court -- that my decision
24 created. So let's say that the taxpayers are pretty the
25 injunction aside, successful in their appeal. So what we have

1 standing -- what we have -- the situation we have is the Court's
2 decision on Count 1, which wasn't -- was that appealed by the
3 rail -- which is not on appeal; is that correct, Attorney
4 Keavany?

5 MR. KEAVANY: Yeah. Count 1 was not against the railroad,
6 Your Honor. It was only --

7 THE COURT: Right. It was against the town.

8 MR. KEAVANY: Yup. And the town --

9 THE COURT: And the town has not appealed that, right?

10 MR. RILEY: Correct.

11 THE COURT: So what we have is this Court's decision saying
12 hey town, you can't spend the money to buy less property. And
13 does that then mean that the railroad has it all? Has all the
14 land and the town has none?

15 MR. KEAVANY: What it means is, and what happened, as you
16 may recall in your judgment, you gave a 60-day injunction to
17 give the town the opportunity to go back to Land Court or have a
18 new meeting to appropriate new funds to acquire the land
19 described --

20 THE COURT: Okay. But both of which -- both of which
21 failed.

22 MR. KEAVANY: You're correct.

23 THE COURT: So now we're -- so where do things stand for
24 the whole situation?

25 MR. KEAVANY: Sure --

1 THE COURT: What's going to happen if the appeal is
2 unsuccessful?

3 MR. KEAVANY: So that gets back to what Justice Meade said
4 back in April, and I believe you, Your Honor, said in February,
5 be careful what you wish for 10 taxpayers. So what the
6 situation is as a result of what they've done, and they
7 were -- I observed the town meeting in March. They were there
8 with their counsel and advocating against the articles to
9 appropriate the new money. They wanted to go the all or nothing
10 approach. So that's where they are.

11 And so if the appeal fails, Your Honor, we don't get the
12 money that we were -- we contracted to with the town, and the
13 town doesn't get the land. So that's where it -- where it is.
14 But again, as you've noted and Judge Rubin noted, no one has
15 challenged the settlement agreement as a separate document.
16 There was Count 1 sought an injunction to prevent the
17 expenditure of the funds from October of 2020 to buy the land
18 that was described in the settlement agreement. They were
19 successful on that.

20 But that doesn't invalidate the settlement agreement and
21 again, the settlement agreement as a whole has not been
22 challenged. So to answer your question, the railroad, or the
23 trust continues to own the land, but the trust doesn't get the
24 compensation it was supposed to get in exchange for the transfer
25 of the property. But it is subject to significant restrictions

1 as to what it can do on the property and what it can't do. And
2 there are deed restrictions. There are buildout restrictions.
3 There's Army Corps of Engineers restrictions.

4 So it is not -- I think you had in the footnote that it's
5 unfair that the town gets everything -- I'm sorry, the railroad
6 gets everything. And that just isn't an accurate portrayal of
7 how it will go if the 10 taxpayers aren't successful, which I
8 don't think they're going to be successful in reversing you on
9 Count 2, Your Honor. Again, the railroad keeps the land and the
10 town keeps the money. But the railroad remains and the trust
11 remains obligated to, as you know, pursuant to the restrictions
12 and the covenants that it agreed to in the settlement agreement.
13 So that is how things would end up.

14 THE COURT: Okay. I know I interrupted you to go down that
15 little side road. Is there anything you'd like to say further
16 on your argument? I'm going to hear briefly from Attorney Lurie
17 on one issue that's on my mind and anything else he wants to
18 address briefly, and then I would allow you to respond briefly
19 as well.

20 MR. KEAVANY: Sure. I'll just -- you know, again, I think
21 you -- we set forth the legal standard for the injunction and I
22 know the focus of the submissions have been on the irreparable
23 harm, Your Honor, but you don't get to the irreparable harm if
24 they have not established a likelihood of succeeding on the
25 merits, and they have not established a likelihood

1 of -- (coughs) excuse me -- succeeding on the merits of the
2 claim. Again, they would have to succeed on reversing your
3 decision on Count 2, which is in essence requiring the town
4 to -- or getting judgment to the 10 taxpayers to somehow enforce
5 a Chapter 61 right that has been adjudicated in another form and
6 has been dismissed.

7 So I just don't see the likelihood of success. They have
8 not established the substantial likelihood of success on the
9 merits, and I don't even think you get to irreparable harm. In
10 the event you do get to irreparable harm, it's not as simple as
11 looking at the land and what's been done to the land. The
12 courts and public interest is -- there's, you know, cases we've
13 cited, you know, enforcing settlement agreements and the
14 parties' expectations as a result of settlement agreements. So
15 it's not as -- pardon the pun -- clearcut as, you know, the 10
16 taxpayers make it seem.

17 I do think there are strong arguments that cut in the trust
18 and the railroad's favor on irreparable harm, Your Honor, but I
19 don't even think you get there because they have not established
20 a likelihood of success.

21 THE COURT: Okay.

22 Attorney Lurie, if you could address this issue that was
23 raised both in the filings as well as just now as to the
24 distinction on the Walden Pond and that other case and your
25 situation in the question of discretion, and anything else you'd

1 like to address briefly that you did not already.

2 MR. LURIE: I have a few small points to mention, Your
3 Honor. On that issue, there is -- it's not a discretionary
4 issue. The statute only allows assignments to nonprofit
5 conservation organizations that are going to maintain 70 percent
6 of the land as forest land. There's no discretion to waive that
7 statutory limitation. They have violated that statutory
8 limitation by buying the land illegally under Chapter 61,
9 Section 8, and then the town waiving it, which had the effect of
10 undercutting that prohibition.

11 It's contrary not only to the language of the statute, but
12 the purpose of the statute, which is to encourage conservation
13 of forest land. So it's not an issue of a discretionary act.
14 It's an issue of the intent of the legislature in limiting
15 assignments to only nonprofit organizations that are going to
16 conserve 70 percent of the land.

17 A couple more points, Your Honor, first of all with respect
18 to Attorney Riley's position about irreparable harm, the town
19 argued before the Land Court and also argued before the Appeals
20 Court that irreparable harm was occurring, you know, so I don't
21 think that there's any issue that irreparable harm is occurring
22 and that the town wanted it stopped until the single justice
23 issued his decision, in which case they bailed. And we believe
24 they shouldn't have bailed. We're going to continue to fight to
25 reverse that decision and get a decision on the merits. But

1 there's no doubt that the town was taking the position that this
2 was irreparable harm that should stop.

3 With respect to where things stand, if the taxpayers are
4 unsuccessful, there's an election next week. There's going to
5 be a new board. The Board's going to have to decide what to do.
6 One, what your decision left open and which has been debated
7 publicly is whether or not there's consideration to support the
8 settlement agreement. You heard Attorney Keavany say oh,
9 there's all these other things that provide consideration: deed
10 restrictions, easements, things like that. But the town argued
11 before Judge Rubin that the key consideration for the waiver was
12 the ability to acquire the forest land. That is now gone. And
13 as you -- a third of the forest land.

14 And as you indicated in your footnote in the decision, that
15 means there's a lack of consideration. That means that that
16 Abrams case, which the Appeals Court decided, does apply, and I
17 believe that the town under a new board would likely, with the
18 citizens' support, file a third lawsuit to void the settlement
19 for lack of consideration because that issue has not been
20 squarely addressed by any court yet.

21 So that's on the horizon. I hope we don't have to get
22 there because the Appeals Court will rule that the settlement
23 agreement's waiver was ineffective for one of the various
24 reasons that we've raised. But if we lose, that's what is going
25 to happen.

1 And I guess the last point is with respect to the
2 assignment issue, Your Honor, the reason why that matters what
3 the railroad did here is because they got leverage. By buying
4 the beneficial interest and starting to clear the land, they
5 created huge leverage which eventually forced the waiver to be
6 agreed to in the settlement agreement. And if they had just
7 attempted to obtain an assignment as the statute allows, they
8 would not have been able to do that. So the waiver was
9 effectively an assignment and it was procured through a
10 violation of the statute which I believe that an appellate court
11 would not allow to go forward. Thank you.

12 THE COURT: Okay. Briefly, Attorney Keavany, you want to
13 respond to any of those points?

14 MR. KEAVANY: Yeah, I do. Again, the last point, that
15 issue was adjudicated in the Land Court. You're not successful,
16 you don't get second and third bites at the apple. But the
17 larger point is the first point Attorney Lurie just made on his
18 reply. Equating a waiver that the Board of Selectmen is
19 permitted to do under Chapter 61, Section 8, with an assignment
20 to a third party, he's intentionally conflating two separate and
21 distinct acts.

22 The absolute discretion is with the Board of Selectmen to
23 exercise or not exercise a right of first refusal, and a waiver
24 of that is not in an assignment. They assigned nothing to the
25 railroad. They released a claim, a right to exercise a first

1 refusal under the statute. That is not the same as an
2 assignment to a third party. They've never cited a case that
3 says that. It is intentionally conflating two separate and
4 distinct issues and two separate and distinct acts, Your Honor.

5 A waiver is not an assignment. They never -- the town
6 never assigned anything to the railroad.

7 THE COURT: Okay.

8 MR. KEAVANY: And I'm happy that Attorney Lurie's finally
9 acknowledged that the settlement agreement wasn't before you, it
10 wasn't before the Land Court, and that a new board may or may
11 not file another lawsuit. But as I said to you in the past,
12 Your Honor, that would be the avenue. That would be the
13 vehicle. If this new board votes to file a lawsuit -- I hope
14 they don't -- to rescind the settlement agreement, let them seek
15 an injunction in that case with that vehicle. I've been saying
16 that from the get-go. That's the appropriate vehicle.

17 An injunction pending appeal of your decision on Count 2 is
18 not appropriate, especially when the thread that it hangs on is
19 equating a waiver of a Chapter 61 right of first refusal with an
20 assignment to a third party, Your Honor. So I respectfully
21 request again that they have not met their burden to establish
22 that they're likely to succeed versing you on Count 2, and as a
23 result, the motion to preserve the status quo should be denied.

24 THE COURT: Okay. I'm not going to issue a decision from
25 the bench, but I can tell you I will issue a decision promptly,

1 as promptly as I possibly can. And we'll see where things go.

2 MR. KEAVANY: Thank you, Your Honor.

3 MR. LURIE: Thank you, Your Honor.

4 MR. RILEY: Thank you, Your Honor.

5 THE COURT: Thank you.

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7 (Hearing concluded at 10:22 a.m.)

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EXHIBIT 26

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 TO PRESERVE STATUS QUO

Before the court is the plaintiffs' motion to "preserve the status quo" and prevent the defendants, Grafton & Upton Railroad ("Railroad") and related persons and entities from removing trees and otherwise altering property designated as protected forestland. Considering the motion as one for injunctive relief pending appeal under Mass. R. Civ. P. 629(c), the court reluctantly **DENIES** the motion.

BACKGROUND

The court briefly summarizes the factual and procedural background of this dispute about 130.18 acres of protected forestland. At some point before the events giving rise to this lawsuit, the City of Hopedale ("Hopedale" or "City") designated and taxed 130.18 acres owned by One Hundred-Forty Realty Trust ("Trust") as forestland ("Forestland") under G. L. c. 61 ("Chapter 61"). Chapter 61 provides a tax benefit to an owner of forest land. In return for the benefit, the

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.

Entered and Copies Mailed 5/16/22



owner must offer the municipality in which the land is located the right of first refusal before selling the land for residential, industrial, or commercial purposes. G. L. c. 61, § 8. The municipality's right of first refusal may only be assigned to a non-profit entity that agrees to maintain at least 70 percent of the land as forestland. *Id.*

On July 9, 2020, the Trust notified Hopedale it intended to sell to the Railroad 155.24 acres of land, which included the Forestland as well as 25.06 acres of wetlands.³ On October 21, 2020, Hopedale notified the Railroad and the Trust that it was moving forward with its option to buy the Forestland. Three days later, Hopedale convened a town meeting, and residents voted to appropriate the money necessary to exercise the option. On November 2, 2020, Hopedale recorded in the county's land records notice of its decision to exercise its right of first refusal and buy the Forestland.

In the meantime, the Railroad purported to buy the Trust's "beneficial interest" in the Forestland and began clearing trees. Hopedale sued the Railroad in Land Court, seeking to stop the clearing and effectuate its acquisition of the Forestland. In February 2021, Hopedale and the Railroad settled the Land Court litigation with an agreement for Hopedale to buy approximately 40 acres of the Forestland for \$587,500 and waive its Chapter 61 rights. On March 3, 2021, the plaintiffs, more than ten taxpaying citizens of Hopedale ("Taxpayers"), challenged the settlement in the instant lawsuit. The Taxpayers also sought a preliminary injunction to stop the Railroad from clearing trees, which the court allowed.

On November 4, 2021, the court decided cross-motions for judgment on the pleadings. The court decided the first count in favor of the Taxpayers, holding that Hopedale lacked authority to buy the smaller piece of land because the purchase was not approved by City voters.

³ The wetlands portion of the property is not relevant to this decision.

The court decided in favor of the Railroad and Hopedale on the second count, concluding that the Taxpayers did not have standing to compel Hopedale to exercise its Chapter 61 rights.

The court also found for Hopedale on the request in the third count for a declaratory judgment that the Forestland was protected parkland. The court enjoined further clearing by the Railroad for 60 days to give Hopedale time to decide whether it would (1) seek town meeting approval to acquire the smaller parcel; or (2) take further steps to exercise its purchase option for the entire parcel. The Taxpayers appealed the court's decision. The appeal is pending.

The following relevant actions have taken place between November 4, 2021, and today:

- Voters at town meeting rejected the City's proposal to buy the smaller piece of land.
- The Land Court denied the City's motion to reopen the judgment of dismissal filed after the parties settled the case. The Land Court also denied the City's motion to enjoin further clearing and rejected the Taxpayer's effort to intervene in the case.
- The City appealed the Land Court decision and asked the Court of Appeals to enjoin the Railroad from cutting down trees. The Court of Appeals denied the City's motion. The City has withdrawn its appeal of the Land Court decision.⁴
- The Railroad has continued to clear trees.

DISCUSSION

A court addressing a request for injunctive relief pending appeal 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).

⁴The Taxpayers have said they plan to appeal the Land Court's denial of their motion to intervene.

See also *Spence v. Reeder*, 382 Mass. 398, 422 (1981) (in emergency eviction procedure, “the issuance or denial of a stay of execution pending appeal ... is a discretionary one for the judge”).

“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, in certain cases such as this one, 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).

The court begins its discussion with the Railroad’s acquisition of a “beneficial interest” in the Forestland. In this court’s view, this action by the Railroad was a flagrant violation of Chapter 61. However, the Taxpayers’ lawsuit does not put that issue before the court. Rather, the court must decide whether the Taxpayers have a likelihood of succeeding in their challenge to the legality of the Settlement Agreement. Unfortunately, the court’s answer to that question is “no.”

First, while G. L. c. 40, § 53 gives the Taxpayer’s standing to sue to prevent the illegal expenditure of money,⁵ it does not give them the right to compel the town to exercise its option to buy the Forestland. Second, the court is not persuaded that the Taxpayers have a likelihood of proving that the Settlement Agreement was an illegal assignment of the City’s Chapter 61 rights. Rather, by settling the case, the City decided to forgo its Chapter 61 option, which the statute plainly allows it to do. G. L. c. 61, § 8. Cf. *Russell v. Town of Canton*, 361 Mass. 727, 731 (1972) (a town meeting vote cannot compel a municipality to take property by eminent domain).

Since the City is not required to exercise the option, even though authorized to do so, a mandamus action cannot succeed.

⁵ Indeed, the Taxpayers were successful in that effort in Count 1 of their complaint.

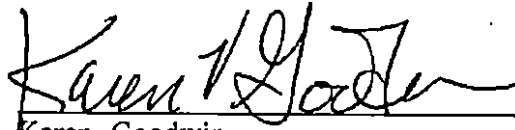
It is true that a lesser showing of likelihood of success is required when, as here, the irreparable harm is great. See *Ross-Simons of Warwick, Inc. v. Baccarat, Inc.*, 102 F.3d 12, 19 (1st Cir. 1996) (court conducts “sliding scale analysis” where “the predicted harm and the likelihood of success on the merits [are] juxtaposed and weighed in tandem”). However, there must be some likelihood of success on the merits. The court cannot in good conscience find that likelihood of success here.

In the court’s view, the actions of the Railroad were wrong. In addition, there appears to be grounds to rescind the Settlement Agreement. This case, however, does not present an opportunity for this court to address those issues.

ORDER

For the above reasons, it is **ORDERED THAT** the plaintiff’s Motion for a Preliminary Injunction is **DENIED**.

Dated: May 5, 2022



Karen Goodwin
Associate Justice, Superior Court

EXHIBIT 27



2022 00073133

State Tax Form CL-9
Revised 9/2008

The Commonwealth of Massachusetts
HOPEDALE

Bk: 67858 Pg: 196
Page: 1 of 1 07/05/2022 11:10 AM WIP

Name of City or Town

Office of the Board of Assessors

Release of Classified Forest-Agricultural or Horticultural-Recreational Land Tax Lien

All rights upon the real property described below under a statement filed for record/registration on OCTOBER 2, 2014, with the WORCESTER Registry of Deeds, Book 52875 Page 355, Document Number _____, Certificate of Title Number _____ are hereby released.

That statement was filed to establish a lien for real property classified as forest agricultural or horticultural recreational land under the provisions of General Laws Chapter 61 61A 61B .

DESCRIPTION OF PROPERTY

(The description must be sufficiently accurate to identify the property. In the case of registered land, the Certificate of Title Number and the Registry Volume and Page must be given.)

UNDEVELOPED LAND LOCATED AT 364 WEST STREET HOPEDALE MA AS SHOWN ON ASSESSOR MAP 2 BLOCK 5 LOT 0 AND CONSISTING OF A TOTAL OF 155.24 ACRES OF WHICH 130.18 ACRES WAS CLASSIFIED AS FOREST LAND UNDER CHAPTER 61

ONE HUNDRED FORTY REALTY TRUST

Name of Owner(s)

[Handwritten Signature]

Board of Assessors

JUNE 14, 2022
Date



Worcester

The Commonwealth of Massachusetts

ss.

On this 14 day of June, 22, before me, the undersigned notary public, personally appeared Donald Howes and Ellen Murphy, as Board of Assessors for the city/town of HOPEDALE, proved to me through satisfactory evidence of identification, which were KNOWN TO ME, to be the persons whose names are signed on the preceding document in my presence, and acknowledged to me that they signed it voluntarily for its stated purpose.

[Handwritten Signature: Lisa Marie Pedroll]
Notary Public

My commission expires March 15, 2024

THIS FORM APPROVED BY THE COMMISSIONER OF REVENUE

ATTEST: WORC. Kathryn A. Toomey, Register

EXHIBIT 28



Brian Riley <rilosplunge@gmail.com>

FW: Outstanding Invoices

2 messages

Brian Riley <BRiley@k-plaw.com>
To: "rilosplunge@gmail.com" <rilosplunge@gmail.com>

Fri, Jul 28, 2023 at 11:06 AM

Brian W. Riley, Esq.

KP | LAW

101 Arch Street, 12th Floor
Boston, MA 02110
O: (617) 654 1722
F: (617) 654 1735
C: (617) 909 9084
briley@k-plaw.com
www.k-plaw.com

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ANDERSON
KREIGER

From: Liz Reilly <liz_reilly@comcast.net>
Sent: Thursday, December 15, 2022 6:42 PM
To: Glenda Hazard <ghazard@hopedale-ma.gov>
Subject: RE: Outstanding Invoices

Nope, been waiting for them. 😊

Will get them out asap.

Thank you!

From: Glenda Hazard [mailto:ghazard@hopedale-ma.gov]
Sent: Thursday, December 15, 2022 4:57 PM
To: Liz Reilly <liz_reilly@comcast.net>
Subject: Fw: Outstanding Invoices

7/28/23, 11:33 AM

Gmail - FW: Outstanding Invoices

I thought these were forwarded... maybe not

From: David S. Mackey <dmackey@AndersonKreiger.com>
Sent: Thursday, December 15, 2022 4:26 PM
To: Glenda Hazard <ghazard@hopedale-ma.gov>
Cc: Jeff Nutting <jnutting@hopedale-ma.gov>
Subject: Outstanding Invoices

Hi Glenda:

Hope all's well.

I'm forwarding two invoices I previously submitted on November 8 and December 6, respectively. If there is any way you could provide payment on these by year-end I'd very much appreciate it. Please let me know if you have questions about either of them or would like to discuss.

Thanks very much.

Regards,

Dave

**ANDERSON
KREIGER**

David S. Mackey (he/him/his)

T. 617.621.6531

Anderson & Kreiger LLP | 50 Milk Street | 21st Floor | Boston, MA 02109

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Brian Riley <BRiley@k-plaw.com>

Fri, Jul 28, 2023 at 11:10 AM

<https://mail.google.com/mail/u/0/?ik=b69291d2ec&view=pt&search=all&permthid=thread-f:1772677303391790248&simpl=msg-f:17726773033917902...> 2/3

additional 25 acres by eminent domain, and appropriated \$25,000 to fund that taking. After the Special Town Meeting, the Board initiated an action in Land Court to prevent the remaining Defendants in this action (hereinafter referred to generally as “the Railroad” or “Railroad Defendants”) from taking any actions regarding the property that would impact the Town’s right of first refusal.

After a Land Court hearing on November 23, 2020, during which the Court (Rubin, J.) expressed skepticism as to the Town’s ultimate ability to acquire the 155 acres (owned by the Trust, and effectively by the Railroad Defendants as beneficial interest holders), the Court issued a mediation screening order. Following mediation sessions before retired Land Court Justice Lombardi (who also expressed doubts as to the Town’s likelihood of success against the Railroad and encouraged a settlement), the parties entered into a settlement agreement with the Railroad (hereinafter “Settlement Agreement,” attached to the Verified Complaint as Exhibit 19), in which the Town would acquire approximately 64 acres of the property the Special Town Meeting authorized for acquisition, as well as an additional 20 acre parcel (Parcel D on Exhibit 1 to the Settlement Agreement) that will require a new vote of Town Meeting to authorize acceptance. The essence of the Plaintiffs’ complaint, and its Motion, is that it would violate Massachusetts law for the Board to acquire less than the original 155 acres, or to spend less than \$1,175,000 to acquire the entire 130 acres of property. While the Plaintiffs may oppose the Settlement Agreement in principal, there are no facts to support that the Town is illegally intending to carry out the provisions of the Settlement Agreement or unlawfully exercising its legal authority. The Town submits that it is entitled to judgment on the pleadings in its favor, and that Plaintiffs’ motion for judgment on the pleadings should be denied.

FACTS AS PLED IN THE COMPLAINT

The Town accepts the following facts as true for purposes of this motion only.

1. This case involves 155 acres of undeveloped and forested property at 364 West Street, owned by the One Hundred Forty Realty Trust, 130 acres of which have been classified and taxed as forestland pursuant to G.L. c.61. Complaint, ¶14. While unstated in the Complaint, this property is zoned as an Industrial District.
2. The remaining 25 acres are not subject to Chapter 61. Complaint, ¶15.
3. In June 2020, the Trustee of the One Hundred Forty Trust negotiated a purchase and sale agreement with the Railroad Defendants to sell the 155 acres to the Railroad. The Trustee later assigned the beneficial interest in the property to the Railroad. Complaint, ¶¶ 23, 34.
4. While the Trustee provided notice of the P&S agreement to the Town, a trigger to the Town's right of first refusal for the forestland, the Board objected to the notice as defective in that it included the 25 acres that were not subject to Chapter 61, but further asserted its right of first refusal based on the assignment of the beneficial interest in the 130 acres to the Railroad. Complaint, ¶41.
5. On October 24, 2020, a Special Town Meeting took two votes relevant to this litigation. The first, on Article 3 of the warrant, was to authorize the Board to acquire the 130 acres, and further to appropriate and issue bonds in the amount of \$1,175,000 to pay for the property. Complaint, ¶44 and Exhibit 12 to Complaint. Notably, the vote did not contain any qualifier that the Board must acquire the entire 130 acres, nor did it seek to require the Board to expend all of the \$1.175 million appropriation authorization.

6. The second vote, on Article 5 of the warrant, authorized the Board to acquire the 25-acre parcel by eminent domain, pursuant to G.L. c.79, and appropriated \$25,000 to pay for it. Complaint, ¶48 and Exhibit 12 to Complaint. Notably, the vote contained no qualifier that the Board must acquire all 25 acres.
7. As demonstrated by the Board's efforts to exercise the Town's right of first refusal and record an Order of Taking under G.L. c. 79, the Board took all steps to attempt to acquire title to the 155 acres as authorized by the Special Town Meeting. Complaint, ¶¶ 49, 51-55.
8. After the Town Meeting, for the purpose of seeking an order stopping the Railroad from clearing the forestland and to confirm its right of first refusal, the Town commenced an action in Land Court, Town of Hopedale v. Jon Delli Priscoli, Trustee of the One Hundred Forty Realty Trust, et al., 20 MISC 000467.
9. The Railroad also filed a petition with the Surface Transportation Board (STB), a federal agency that regulates matters involving railroads, particularly freight rail. The Railroad sought a declaratory order from the STB that federal law preempts the Town's authority to acquire any of the subject property, under either G.L. c.61 or G.L. c.79. Complaint, ¶56.
10. Following a November 23, 2020 hearing in Land Court on the Town's motion for preliminary injunction, which the Court denied, Judge Rubin issued an order referring the case to mediation. While Judge Rubin's decision denying the preliminary injunction does not so state, counsel for the Town understood the Court to be expressing that mediation was advisable as the Town's claims to the 155 acres may not be successful.

11. As a result of the mediation, during which Judge Lombardi also encouraged a settlement, the Town and the Railroad reached an agreement to resolve both the Land Court litigation and the STB matter. The Settlement Agreement, attached to the Complaint as Exhibit 19, speaks for itself, but in summary, the Town will acquire Parcel A (approximately 64 acres), all of which was included in the Special Town Meeting's votes on Articles 3 and 5 of the October 24, 2020 warrant. The Railroad also agreed to donate Parcel D, approximately 20 acres, but since this was not part of the Special Town Meeting vote, a vote of Town Meeting is required in accordance with G.L. c.40, §14 to accept Parcel D.

ARGUMENT

A. Plaintiffs Misconstrue the Appeals Court Injunctive Order

The Town submits that throughout their Memorandum in support of its Motion for Judgment on the Pleadings, the Plaintiffs overstate both the breadth and intent of the Appeals Court injunctive order issued by Justice Meade, presenting it as strongly supporting all three Counts of the Complaint. In fact, however, the Order found only that the Plaintiffs had “shown a likelihood of success on the merits” as to whether the Special Town Meeting vote on Article 3 authorized acquisition of the 130 acres of Chapter 61 property, or whether it only appropriated funds for the 130-acre parcel but did not authorize acquisition.¹ That is the extent of the findings, and Justice Meade was careful to qualify the limited nature of his order:

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 demonstrated some chance of success on their claim.

In addition, the Plaintiffs argue that because the Town took steps to exercise the right of first refusal and take title to the Chapter 61 parcel, this is irrevocable and the Board has no option but

¹ The Town respectfully submits that the Appeals Court Order is incorrect on this issue, see *infra*.

to take title to all 130 acres and, significantly, that no new Town Meeting vote to authorize acquiring the 64 acre parcel under the terms of the Settlement Agreement would be legal or effective. In fact, Justice Meade explicitly rejected that argument even in his narrow ruling: “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.” (emphasis added). It is clear why the Plaintiffs are arguing so strenuously that the only conceivable outcome is the Town acquiring all 155 acres - because if there is a new Town Meeting vote pursuant to the Settlement Agreement, all of the Plaintiffs’ claims in this litigation become moot, and Justice Meade took the extra step to make his view of the case clear to the parties.

B. The Town Meeting Vote on Article 3 Authorized Acquisition of the Chapter 61 Property

After the Superior Court denied their request for a preliminary injunction, the Plaintiffs sought review by a single justice in the Appeals Court, arguing (among other issues) that the October 24, 2020 Special Town Meeting vote on Article 3 did not in fact authorize the Board to acquire the 130 acre parcel pursuant to G.L. c.40, §14. Justice Meade agreed with this position, but did not decide whether the vote authorized acquisition pursuant to Chapter 61 either.² The Town respectfully submits that the Order is incorrect on this point. Article 3 stated in relevant part:

To see if the Town will vote to acquire, by purchase or eminent domain, certain property, containing 130.18 acres, more or less , located at 364 West Street... and in order to fund said acquisition, raise and appropriate, transfer from available funds, or borrow pursuant to G.L. c. 44, §7, or any other enabling authority, a sum of money in the amount of One

² Justice Means noted that neither party provided appellate decisions regarding whether G.L. c.61,§8 provides full authority for a town acquiring real property or whether such authority resides only in G.L. c.40, §14. The reason for this is plain – Chapter 61 is silent as to authority take title by deed or to appropriate funding to do so because that authority is found exclusively in G.L c.40, §14, and placing an article pursuant to G.L c.40, §14 to seek authority and funding to acquire virtually any real property has been a legal requirement for nearly a century.

Million One Hundred and Seventy-Five Thousand Dollars (\$1,175,000.00)... said property being acquired pursuant to a right of first refusal in G.L. c. 61, §8...

When the motion on Article 3 was made, it stated in relevant part "I move that the Town vote to appropriate the sum of [\$1,175,000] to pay costs of acquiring certain property, consisting of 130.18 acres, more or less, located at 364 West Street,...". (emphasis added). The Town submits that the difference between the article and the motion is one of form and not substance. The article sought an appropriation in order to acquire certain identified property, and so did the motion. Both the Plaintiffs and the Single Justice conclude that the reason for the difference was that the 400 voters at Town Meeting, who unanimously approved the motion, were aware of the legal subtleties of G.L. c.61, §8 and that the Board exercising an option is the same thing as acquiring title by deed to real property (it plainly is not), and therefore only an appropriation was required to acquire title. This argument has no legal or practical support. There is realistically only one presumption that should be made for what the 400 voters thought they were doing on October 24, 2020 – they were being asked (in Article 3) to vote to acquire the 130 acres and to appropriate \$1.175 million to pay for it, and they voted to do so.

C. The Board Has Legal Authority to Acquire Less than 155 Acres

While the Plaintiffs' include numerous facts and allegations that are not relevant to or determinative of the legal issues and outcome of this case, the Complaint may be summarized as two primary claims:

- a) Since Town Meeting authorized the Board to acquire approximately 155 acres, 130 acres of which has been subject to G.L. c.61, the Board cannot lawfully acquire a lesser amount of property; and

b) The Board lacked authority to waive the Chapter 61 right of first refusal in the Settlement Agreement. This claim fails to allege a violation of G.L. c.40, §53, but the Board shall address it below.

The Board submits that, prior to the Land Court's directive to participate in mediation, it fully intended to acquire all 155 acres, and it exercised (or attempted to exercise) the authority granted by the Town Meeting votes to do so. During the course of the Land Court proceedings and mediation, however, the Board determined that pursuing its Land Court case to trial, as well as having to defend the Town's position before the Surface Transportation Board, would not only be prohibitively expensive but could well result in the Town receiving **none** of the 155 acres. The Board determined, therefore, that it would be substantially more in the public interest to resolve all litigation with the Railroad via the Settlement Agreement.

(1) The Board has Legal Authority to Acquire Less than 155 Acres.

The Plaintiffs allege that because the Special Town Meeting vote had such clear support to acquire all 155 acres at issue, the Board lacked legal authority to approve the Settlement Agreement and acquire approximately 85 acres – 40 acres that was subject to Chapter 61, 25 acres that was to be acquired by eminent domain, and another 20 acres (Parcel D on the plan attached to the Settlement Agreement as Exhibit 1) that was not involved in the Special Town Meeting votes. Notwithstanding the Complaint's allegations, however, there is no legal support for this allegation and the Settlement Agreement's terms do not violate G.L. c.40, §53.

In order for a town to acquire real property, there must be a favorable vote of Town Meeting pursuant to G.L. c.40, §14 to do so – a majority vote is sufficient if there are no funds being spent, but a two-thirds vote if there is an appropriation (the Special Town Meeting vote was recorded as unanimous). See Harris v. Wayland, 3932 Mass. 237, 238 and n.3 (1984). As

stated expressly in the Settlement Agreement, the Town may not accept the donation of the 20 acre “Parcel D” until there is a further Town Meeting vote to authorize it. As for the other approximately 65 acres, however, these parcels were already authorized by Town Meeting vote for acquisition, and there were no limiting conditions in such votes to restrict how the Board could exercise its authority. Massachusetts case law clearly establishes that while a Board of Selectmen cannot acquire property that was not authorized by Town Meeting, Town Meeting cannot compel the Board to complete such acquisition and the Board may legally acquire less property than authorized. See Russell v. Town of Canton, 361 Mass. 727 (1972).³

(2) The Board’s Waiver of the Right of First Refusal was Valid.

As part of the Settlement Agreement, the Board agreed to waive its right to further exercise any right of first refusal the Town has pursuant to G.L. 61, §8. The Plaintiffs argue extensively that the Board has no authority to do so and that it was required to seek a further vote of Town Meeting, claiming that “those rights cannot be waived as a matter of law and there was no approval by Town Meeting to not exercise or waive those rights.” Complaint, ¶121. The Plaintiffs have consistently misrepresented or misunderstood how Chapter 61, §8 works, as well as the fact that exercising a right of first refusal (or declining it) is an executive function that only a Board of Selectmen can accomplish. Chapter 61, §8 details the procedures when an owner of forestland being taxed under the statute intends to alter the use of the property (by the owner or a prospective new owner). This includes a notice and copy of the purchase and sale agreement submitted to the Town, triggering a right of first refusal for the Town that must be exercised within 120 days or the right is lost. The Land Court proceedings included the issue of whether

³ In denying Plaintiffs’ motion for preliminary injunction, the Superior Court (Frison, J.) found that Russell governed and demonstrated the lack of a likelihood of success on the merits of the Complaint. The Appeals Court (Meade, J.) found that “while Russell may guide in this case, it is not controlling.”

the original notice to the Town was valid; however, as part of the settlement, the Board agreed not to seek to enforce the right of first refusal.⁴

The actual action that a municipality must take to exercise a right of first refusal is stated in §8 as follows:

This option may be exercised only after a public hearing followed by written notice signed by the mayor or board of selectmen, mailed to the landowner by certified mail at such address as may be specified in the notice of intent. Notice of the public hearing shall be given in accordance with [the Open Meeting Law].

The notice of exercise shall also be recorded at the registry of deeds and shall contain the name of the record owner of the land and description of the premises adequate for identification of it.

It is notable, of course, that neither these paragraphs, nor anywhere in §8, is there any reference to a vote of Town Meeting. This is because such exercise is, again, an executive action whose sole authority resides with the Board of Selectmen. If, for example, a Board of Selectmen receives a valid §8 notice for conversion of forestland, it may determine on its own that the Town should not acquire the property – it may either send written notice to the owner waiving the right of first refusal or simply allow the 120 days to run without acting. There is nothing Town Meeting or anyone else can do to exercise the right of first refusal in such a case. Before the Board can actually acquire property after exercising such right, however, it must obtain a vote of Town Meeting to authorize acquisition and appropriate funds – such vote is absolutely and solely governed by G.L. c.40, §14. But the right of first refusal itself is exclusive to the Board. As such, and so the Board may waive its authority to exercise such right and acquire property, even after initially voting to exercise it, and there is no case law precedent stating otherwise. Moreover, there is no reason that a Board of Selectmen cannot decide not to complete

⁴ In its November 23, 2020 order, the Land Court (Rubin, J.) expressed significant doubt that the original notice from the Trust was effective, and therefore whether the 120 day exercise period ever began is also uncertain. Exhibit 16 to Verified Complaint.

a Chapter 61 (or eminent domain) acquisition at any point prior to actually paying for it and taking the deed if it determines that to be in the public interest.

The Plaintiffs argue that Chapter 61 contains no authority for a Board to waive the exercise of the right of first refusal, and therefore (1) the Settlement Agreement is illegal and (2) the Board is compelled to purchase the 130 acres. This is contrary to Massachusetts case law. The authority relied upon by Plaintiffs to claim that the Board cannot waive exercising the right of first refusal is inapposite, and actually states that a municipality cannot be held to have waived its right against its will. See Smyly v. Town of Royalston, Land Court, 2007 WL 2875942:

In the instant case, this court disagrees with Plaintiff's argument that the Town waived its right to insist on statutory compliance upon its exercise of the option. Courts have consistently held that where the language of a statute sets forth strict, unambiguous procedural requirements, the court will not construe the statute in a manner for which no provision was made. See *Town of Billerica*, 66 Mass.App.Ct. at 668. Additionally, this court previously held with regard to G.L. c. 61A, which sets forth notice requirements identical to those in G.L. c. 61 § 8, that the statute does not provide for waiver of requirements, based on the reasoning that exceptions not provided for should not be read into the statute. *Id.* This court will not construe the statute to allow for waiver as this would be wholly inconsistent with the express language provided by the legislature and the prior holdings of this court. (*emphasis added*)

This holding is unrelated to a Board of Selectmen waiving its right of first refusal and/or to acquire Chapter land of its own volition. Moreover, neither Town Meeting nor ten taxpayers can compel a Board of Selectmen to complete a real property acquisition if the Board determines it is not in the Town's best interest. See Russell v. Canton, 361 Mass. 727, 730-32 (1972):

One argument made by the plaintiffs is that the town vote expressly directed the board to take all of their land, and that the board had no discretion to take less than all of it. This argument is without merit. The selectmen are public officers whose powers and duties with reference to eminent domain are fixed by statute. It is questionable whether a town meeting vote can operate to direct or command them in the discharge of their duties.... We hold that the town could authorize the selectmen to take real estate by eminent domain, but that it could not direct or command them to do so. Although G.L.c. 40, § 14, requires that before land is taken by eminent domain the taking be authorized by a vote of the town, it vests the power to make the taking in the selectmen of the town. There is nothing in § 14 which makes such an authorization binding on the selectmen, or which

prevents them from exercising their discretion and sound judgment in deciding whether to make a taking pursuant to the authorization. If the selectmen, being authorized by the town to make a taking, do not make it, the decision is not judicially reviewable as to its wisdom.

While Russell concerns a Town Meeting vote to acquire property by eminent domain, this principal applies equally to the right of first refusal in Chapter 61, §8. If the Board determines that circumstances mitigate against completing an acquisition of real property, neither Town Meeting nor a court may compel it to do otherwise. See Anderson v. Board of Selectmen of Wrentham, 406 Mass. 508, 512 (1990):

The role of the town manager or board of selectmen in the collective bargaining process is an essentially executive function mandated by statute. We have held that, when a board of selectmen is acting in furtherance of a statutory duty, the town meeting may not command or control the board in the exercise of that duty. See Russell v. Canton, 361 Mass. 727 (1972); Breault v. Auburn, 303 Mass. 424 (1939); Lead Lined Iron Pipe Co. v. Wakefield, 223 Mass. 485 (1916). These decisions reflect an application of the more general principle that "[a] municipality can exercise no direction or control over one whose duties have been defined by the Legislature." Breault v. Auburn, *supra* at 428, quoting Daddario v. Pittsfield, 301 Mass. 552, 558 (1938).

(3) It Is Not Unlawful For The Board To Agree To Expend \$587,500.

Similar to the claims addressed above, the Plaintiffs allege that it is unlawful for the Board to agree to expend \$587,000 for the 64 acres it is to receive by purchase pursuant to the Settlement Agreement, because Town Meeting appropriated \$1,175,000 for the entire 130 acres and the Board may not agree to spend less. The Town first submits that the Plaintiffs' reliance in the Verified Complaint on the difference between how much the Town is paying per acre under the Settlement Agreement versus what the Railroad paid is a red herring; the two amounts were not negotiated on a per acre price and involve different purposes for acquisition, and the Town Meeting appropriation vote was a bottom line figure and not per acre. Moreover, the Settlement Agreement proposes the Town acquiring 20 acres that were never a part of the Special Town Meeting votes or the Land Court. Most importantly, however, whenever Town Meeting

appropriates funds – whether to acquire property, contract for services, or fund annual department operating budgets – the Town is not obligated to spend all of the appropriation, but it spends what is needed. Regardless of how the Plaintiffs feel about the Settlement Agreement terms, it is clearly not unlawful for the Board to authorize spending \$587,000 of the amount appropriated by Town Meeting for a portion of the property that Town Meeting authorized the Board to acquire, nor to issue bonds that were also authorized by Town Meeting for the purpose.

D. Plaintiffs Lack Standing to Challenge the Land Court Settlement Agreement

The Town supports and agrees with the Motion for Judgment on the Pleadings being filed by the Trust and Railroad Defendants in this matter. The Town further submits that while the basis for this litigation pursuant to G.L. c.40, §53 is at least properly before this Court, the Plaintiffs lack both standing or credible arguments to challenge the validity or legality of the Land Court Settlement Agreement itself (Exhibit 19 to Verified Complaint). The Board filed the Land Court action to assert and confirm its right of first refusal pursuant to G.L. c.61, §8 (which the Railroad Defendants and the One Hundred Forty Realty Trust challenged), and to prevent the Railroad Defendants from performing any clearing of the subject property. As detailed *supra*, the parties had a hearing and two sessions of court-ordered mediation before Land Court justices. During this process, based on input from its legal counsel and Judge Lombardi, the Board ultimately concluded that its best chance of securing at least some of this important property was to reach a settlement with the One Forty Realty Trust and Railroad Defendants. This was a duly litigated lawsuit between the only parties in interest, it was resolved via a settlement agreement and joint stipulation of dismissal with prejudice, and both parties gave up interests that they claimed for their own in resolving the case (the Plaintiffs' claim that the Agreement is a void contract because the Town received no consideration is baseless).

As such, the Plaintiffs' attempt to collaterally attack the Settlement Agreement is not permissible and these claims in Counts I and II cannot prevail. See Barrington v. Dyer, 95 Mass. App. Ct. 1116 (2019) (unpublished):

We affirm the judgment of the Superior Court dismissing the plaintiff's complaint for fraud. *As the judge correctly recognized, the plaintiff's complaint constitutes an impermissible collateral attack on the judgment of the Probate and Family Court, entered upon the stipulation of dismissal, with prejudice, of the defendant's decedent's complaint for partition of certain real property. See Harker v. Holyoke, 390 Mass. 555, 558, 457 N.E.2d 1115 (1983); Fishman v. Alberts, 321 Mass. 280, 282, 72 N.E.2d 513 (1947). The plaintiff's contention that the stipulation of dismissal is invalid (because it was procured by fraud) does not require a different result; any such contention must be established by means of a motion in the Probate and Family Court for relief from the judgment entered on the stipulation, and not by a separate action in the Superior Court. See Mass. R. Civ. P. 60 (b) (3), 365 Mass. 828 (1974).* Nor does the plaintiff's invocation of the recently enacted Uniform Trust Code affect the analysis; G. L. c. 203E, § 111, largely codified prior law, and in any event it does not authorize a collateral attack on a judgment of the Probate and Family Court based on a claim that the agreement on which it was based is invalid.

The Plaintiffs are unhappy with the results of the Land Court litigation and the terms of the Settlement Agreement. This does not, however, give them standing to “undo” the Agreement, which is the heart of what the Verified Complaint hopes to achieve. Even if, in order to carry out the Agreement, a new Town Meeting vote is required – which the Town does not concede or agree with – the Settlement Agreement itself is valid and does not exceed the Board's statutory executive authority, and the Plaintiffs' attempts to pursue their claims as if the Land Court proceedings themselves were illegitimate illustrates the futility of their arguments:

By attempting to relitigate in the Superior Court the same claim on which judgment had previously been entered in the Housing Court, the plaintiffs have challenged the Housing Court judgment collaterally. If we were to permit such an attack as a general rule, the finality of judgments would be substantially impaired. This would not be in the best interests of litigants or the public. While it is important that judgments be rendered only by courts having the right to render them, it is also important that controversies be finally terminated after there has been full and fair litigation. As we observed in *Wright Mach. Corp. v. Seaman-Andwall Corp.*, 364 Mass. 683, 688 (1974), quoting *Baldwin v. Iowa State Traveling Men's Ass'n*, 283 U.S. 522, 525 (1931), “[p]ublic policy dictates that there be an end of litigation; that those who have contested an issue shall be bound by the

result of the contest, and that matters once tried shall be considered forever settled as between the parties." The public interest in enforcing limitations on courts' subject matter jurisdiction is ordinarily served adequately by permitting direct attack on judgments. Although there may be rare circumstances in which sound policy requires that finality give way to the enforcement of limitations on a court's authority by collateral attack, this is not such a case.

Harker v. Holyoke, 390 Mass. 555, 558-559 (1983).

E. Remaining Plaintiffs' Claims Do Not Show Substantial Likelihood Success On Merits

During the pendency of this litigation, the Plaintiffs have advanced numerous and often contradictory arguments. For example, the Plaintiffs state that the Town Meeting vote on Article 3 did not authorize the acquisition of any real property – but they then argue that said vote was sufficient to vest actual or quasi-title to the property, notwithstanding that the Town has not paid for any property and holds no deeds. They even argue that the Board committed an illegal “assignment” of its Chapter 61 rights to the Trust and Railroad, despite the fact that those parties are the owners of that property. Count III has other random arguments that the Town is entitled to judgment on, summarized below.

Article 97: The Complaint suggests that the terms of the Agreement violate Article 97 of the Amendments to the Massachusetts Constitution. Article 97 protects property that is held by municipalities for certain purposes, such as conservation, open space, and water supply protection, and such land cannot be used for an inconsistent purpose unless there is a two-thirds vote of the General Court to allow it. Plaintiffs overlook the plain fact, however, that Article 97 does not apply to any of the 155 acres because, at present, the Town does not own any of it. The Property cannot be dedicated as parkland, conservation or any other purpose until the Town actually acquires it by deed. While the Board took steps to complete such acquisition via Chapter 61 and eminent domain, it has not done so for the reasons discussed above – no deeds have changed hands, no compensation has been paid to the One Hundred Forty Realty Trust, and

the Board has waived its rights to pursue its current or future Chapter 61 rights. Therefore, Article 97 is irrelevant to the issues in the litigation.

Chapter 61 Rollback Taxes: The Complaint alleges that the Town will pay the Trust's rollback taxes, as well as a survey of Parcel A and hydrogeological analysis for a potential public water supply. A hydrogeological study is not imminent, and the Town may need to seek a new appropriation if it determines such study is advisable. As for a survey of the property the Town is to acquire, a survey is commonly considered to be "costs incidental and related to" the acquisition of real property, and such costs were a part of the Special Town Meeting vote on Article 3. As to the rollback taxes pursuant to Chapter 61, Massachusetts taxation statutes do not permit a waiver of such taxes. However, the Settlement Agreement provides that the costs of the taxes will be reflected in the purchase price, but "the Defendant [Railroad] shall pay the full amount of the roll-back taxes to the Town." Therefore, neither the Town nor the Board are "paying" the rollback taxes.

Finance Committee Review: The Town bylaws do require that the Finance Committee review appropriation articles and make recommendations to Town Meeting (which Town Meeting may follow or disregard). This is exactly what the Finance Committee did at the October 24, 2020 Special Town Meeting, however, and there is no new appropriation required to carry out acquiring Parcel A.

CONCLUSION

Throughout this litigation, the Plaintiffs have advanced a myriad of theories in hopes of prevailing in their claims – that the Board is not authorized to acquire the 130 acres under G.L. c.40, §14 but is under G.L. c.61, a statute that does not explicitly authorize acquisition; that the Board of Selectmen illegally "assigned" real property to the Railroad Defendants, in spite of not

owning said property; that the Board is violating Article 97 of the Massachusetts Constitution in conveying conservation property, although again with property the Town does not own; that the Board has an irrevocable and irreversible obligation to acquire the 130 acres, notwithstanding no vote authorizing acquisition and Massachusetts case law giving the Board the ultimate executive authority to decline to acquire real property; and even that the Town already legally and/or effectively owns the 130 acres, despite no purchase and sale agreement between the parties, no exchange of funds and no deed to said property changing hands. The Plaintiffs have also made veiled but clear insinuations that the Board has either been hoodwinked by the Railroad Defendants or are corruptly in league with them, allegations that are as slanderous as they are utterly without basis. Finally, the Plaintiffs approach their motion as if they have already been proven all claims, notwithstanding that the Appeals Court Single Justice found only that the Complaint presented a “substantial likelihood of success” on a single claim, i.e., that the October 24, 2020 Town Meeting vote on Article 3 did not actually authorize the Board to acquire any of the 130 acres.

Sifting through the chaff of Plaintiffs’ claims to the single dispositive claim properly before this honorable Court, the Town submits that there are two potential outcomes to that claim:

- (a) The October 24, 2020 Town Meeting votes authorized the Board of Selectmen to acquire the entire 155 acres of property at issue: The Town submits this is the proper result, and that in accordance with the Board’s executive authority, proper statutory interpretation and the Supreme Judicial Court’s reasoning in Russell v. Canton, the Board therefore had authority to enter into the Settlement Agreement as best promoting the public interest; or

(b) The October 24, 2020 Town Meeting vote on Article 3 did not authorize the Board to acquire the 130 acres of Chapter 61 forestland: The Town disagrees with this argument, but acknowledges that Appeals Court Justice Meade made this preliminary finding. If this honorable Court agrees with that determination, the Town requests that this Court further agree with Justice Meade that a new Town Meeting vote to authorize the Board to make the acquisitions pursuant to the Land Court Settlement Agreement would “render the transaction lawful” and resolve all outstanding issues in this litigation.

In conclusion, therefore, the Town and Board of Selectmen submit that this litigation is ripe for resolution on cross-motions for judgment on the pleadings, and that judgment should enter in favor of the Town of Hopedale and Board of Selectmen on Counts I, II and III.

Defendants,
TOWN OF HOPEDALE, LOUIS J.
ARCUDI AND BRIAN R. KEYES,

By their attorney,



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Dated: May 17, 2021
763544/HOPD/0145

CERTIFICATE OF SERVICE

I, Brian W. Riley, hereby certify that on the below date, I served a copy of the foregoing Memorandum in Response to Plaintiffs' Motion for Judgment on the Pleadings and Cross-Motion for Judgment on the Pleadings on behalf of the Defendants Town of Hopedale, Louis J. Arcudi, III and Brian R. Keyes, by first class and electronic mail, to the following:

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Brian W. Riley

Dated: May 17, 2021

763544/HOPD/0145

EXHIBIT 30

Andrew DiCenzo

From: Appeals Court Clerk's Office <AppealsCtClerk@appct.state.ma.us>
Sent: Tuesday, April 19, 2022 2:36 PM
To: Andrew DiCenzo
Subject: 2022-J-0146 - Notice of Docket Entry

- COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT CLERK'S OFFICE

April 19, 2022

RE: No. 2022-J-0146
Lower Ct. No.: 20 MISC 000467

TOWN OF HOPEDALE
vs.
JON DELLI PRISCOLI & others [1]

NOTICE OF DOCKET ENTRY

Please take note that on April 19, 2022, the following entry was made on the docket of the above-referenced case:

MEMORANDUM AND ORDER: This matter is before me on two motions for an injunction pending appeal, pursuant to Mass. R.A.P. 6(a), both seeking to enjoin the defendants from further altering or destroying forestland within the town of Hopedale (the town) that was the subject of the underlying Land Court case. The first motion was brought by a group of residents of the town of Hopedale (collectively, the residents). The second motion was brought by the town.

The town has appealed the denial of its motion for relief from judgment, which entered pursuant to a stipulation of dismissal. The residents appealed the denial of their motions to intervene and join the town's motion for relief from judgment. It is during those appeals that moving parties seek to enjoin further development of the disputed property.

Upon the filing of the resident's motion, I entered a temporary injunction and asked for responses. The defendants are a railroad company and interested individuals who are the owners of the disputed property and have begun developing the land for use by the railroad. The defendants filed a response to the resident's motion. The town then filed its motion, and the defendant's filed a response. The residents filed a sur-reply on April 13, 2022. I have carefully reviewed the parties' submissions.

Background. This is not the first time that this dispute has reached a single justice of this court. See 21-J-111 and 21-J-154. In 21-J-111, the single justice considered a petition, pursuant to G.L. c. 231, s. 118, first para., arising from a separate Superior Court action brought by the residents as ten taxpayers to the town of Hopedale. In his order, that single justice provided the following background:

"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."

The single justice enjoined the town from expending further funds toward the settlement in the absence of another vote by town meeting. Ultimately, the Superior Court judge in the ten-taxpayer case issued a judgment in favor of the taxpayers. Unable to proceed with the limited acquisition detailed in the settlement agreement without further authorization from town meeting, the town filed a motion for relief from judgment in the Land Court seeking to reopen its statutory claim to the right of first refusal as to all the land.

The residents then, essentially, moved to intervene and join in the town's motion. After briefing and a hearing, the Land Court judge denied the residents' and the town's motions, and the residents and the town appealed. The town held a special town meeting to authorize the acquisition of the real estate pursuant to the settlement agreement, but the town voted against it. The residents and the town sought an injunction in the Land Court pending appeal, which was denied. Until the entry of my order, the defendants had resumed developing the land.

Discussion. A single justice of this court may issue an "order suspending, modifying, restoring, or granting an injunction during the pendency of an appeal." Mass. R.A.P. 6(a)(1). In a civil case, "[a]n appellant seeking a stay pending appeal must ordinarily meet four tests: (1) the likelihood of appellant's success on the merits; (2) the likelihood of irreparable harm to appellant if the court denies the stay; (3) the absence of substantial harm to other parties if the stay issues; and (4) the absence of harm to the public interest from granting the stay." *Property Acquisition Group, LLC v. Ivester*, 95 Mass. App. Ct. 170, 180 (2019), quoting *C.E. v. J.E.*, 472 Mass. 1016, 1017 (2015). Failure to show a likelihood of success on the merits is fatal to a motion to stay. See *id.*; *Property Acquisition Group, LLC*, *supra* at 180-181.

The parties disagree over the meaning of "likelihood of appellant's success on the merits." The residents and the town rely on the standard for a stay of a criminal sentence under Mass. R. A. P. 6 (b), citing *Commonwealth v. Levin*, 7 Mass. App. Ct. 501, 504 (1979). This lenient standard for a criminal case, however, is not the correct standard for a civil case. In civil matters, the movants must "demonstrate that [they are] likely to succeed." *Foster v. Commissioner of Correction*, 488 Mass. 643, 651 (2021), quoting *Foster v. Commissioner of Correction*, 484 Mass. 698, 712 (2020); see also *Garcia v. Department of Hous. & Community Development*, 480 Mass. 736, 752 (2018) (a preliminary injunction was improper even though the plaintiffs might be able to prove their case). Accordingly, the appellants must show that the Land Court judge "likely erred," that is, more likely than not erred.

With this standard in mind, the issue before me is whether the moving parties have demonstrated that the Land Court judge likely erred when she denied the town's motion for relief from judgment. [2] "Motions for relief from final judgment brought under rule 60 (b) are commended to the judge's discretion, and a judge's decision will not be

overturned, except upon a showing of a clear abuse of discretion" (quotations and citation omitted). *Care One Mgt., LLC v. Brown*, 98 Mass. App. Ct. 589, 594 (2020).

Here neither the town nor the residents have demonstrated that it is more likely than not that the appellate court will find a clear abuse of the judge's discretion. The judge's decision demonstrates that the judge considered the appropriate factors in determining whether to grant the town relief from judgment, and it does not appear, in light of the state of the record and argument before me, that the judge's decision was unreasonable. [3] See *L.L. v. Commonwealth*, 470 Mass. 169, 185 n.27 (2014) (a clear error of judgment in weighing relevant factors constitutes an abuse of discretion).

The town's and the residents' reliance on this court's decision in *Bowers v. Board of Appeals of Marshfield*, 16 Mass. App. Ct. 29 (1983) is misplaced. In that case, the ultra vires act of the selectboard was included in the judgment and was for the benefit of the non-town plaintiffs. *Id.* at 33-34 ("What makes the instant case exceptional is that a public authority, the selectmen, offered as their part of an agreement for judgment a restriction that they lacked the power to impose" [emphasis added]). Conversely, in this case, the ultra vires act was not memorialized as part of the judgment and, to the extent that the town wished to recognize the benefit of the settlement agreement, it had the opportunity to do so by vote of town meeting. In other words, the select board was authorized to settle the matter and did so. That the town was unwilling to correctly appropriate the funds to fully recognize the benefit of that agreement does not entitle the town to relief from judgment.

Having failed to demonstrate a sufficient likelihood of success on the merits, the town's and the residents' motions for an injunction pending appeal are denied. The temporary injunction entered on March 28, 2022 is vacated. (Desmond, J.).
*Notice/Attest/Rubin, J.

Footnotes:

1. Michael R. Milansoki, trustee of the One Hundred Forty Realty Trust and Grafton & Upton Railroad Company.
2. The resident's appeals, though not technically from the denial of the town's motion, are contingent on the success of setting aside the judgment entered pursuant to the town's stipulation of dismissal.
3. I am not deciding this case on the merits; my conclusion is limited to the issue before me, i.e., whether the moving party has demonstrated the requisite likelihood of eventual success at this time. 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").

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 19, 2022

To: Peter F. Durning, EsquirePeter Vetere, EsquireAndrew DiCenzo, EsquireDonald C. Keavany, Jr., EsquireHarley Clarke
Racer, EsquireDavid E. Lurie, EsquireLand Court Department

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.