

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

LAND COURT DEPARTMENT
OF THE TRIAL COURT

_____)
)
 TOWN OF HOPEDALE,)
)
 Plaintiff,)
)
 ELIZABETH REILLY, et al.,)
)
 Intervenor-Plaintiffs,)
)
 v.)
)
 JON DELLI PRISCOLI and MICHAEL R.)
 MILANOKSI, as Trustees of the ONE)
 HUNDRED FORTY REALTY TRUST, and)
 GRAFTON & UPTON RAILROAD)
 COMPANY,)
)
 Defendants.)
 _____)

CASE No. 20 MISC 000467 (DRR)

AMENDED VERIFIED COMPLAINT OF INTERVENOR-PLAINTIFFS ELIZABETH REILLY AND TEN CITIZENS OF HOPEDALE

Intervenor-plaintiff Elizabeth Reilly and Ten Citizens of Hopedale (the “Citizen Plaintiffs”), join the action originally filed by the above-referenced plaintiff, the Town of Hopedale (the “Town”), seeking to vacate the dismissal of the Town’s action; preliminarily enjoin any land-clearing activity in the M.G.L. c. 61 Forestland at 364 West Street in the northern tip of Hopedale, Massachusetts; and declare that the Town’s ultimate purchase price of the Forestland must be reduced due to the Railroad Defendants’ unlawful land-clearing of the Forestland that they commenced during the pendency of the Hopedale Citizens’ action and while under the Appeals Court injunction and/or that the Railroad Defendants be ordered to restore the Forestland.

This is an action by more than ten taxpaying citizens of the Town to enforce and effectuate the Judgment they obtained in the Superior Court action, as affirmed by the Appeals Court, that the Settlement Agreement entered into between the Town and the Railroad Defendants is unauthorized, that the Town may seek to enforce its c. 61 Option to purchase the Forestland, and that the Citizen Plaintiffs have the right to enforce the Judgment as affirmed to prevent further harm to the Forestland until this matter is resolved.

PARTIES

1. Intervenor-plaintiffs are Elizabeth Reilly, Carol J. Hall, Donald Hall, Hilary Smith, David Smith, Megan Fleming, Stephanie A. McCallum, Shannon W. Fleming, Janice Doyle, Michelle Smith, and Melissa Mercon Smith. Each Intervenor-Plaintiff is a taxpaying resident and citizen of Hopedale, Massachusetts.

2. Plaintiff Town of Hopedale is a body corporate and politic established under the laws of the Commonwealth of Massachusetts.

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

4. 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 (the "Trust").

5. Defendant Jon Delli Priscoli ("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 Trust. This action is brought against Delli Priscoli in his capacity as owner of the Railroad and as a Trustee.

6. Defendant Michael R. Milanoski (“Milanoski”) is the president of the Railroad and resides in Cohasset, Massachusetts. Milanoski is also a Trustee of Trust. This action is brought against Milanoski in his capacity as president of the Railroad and as a Trustee.

JURISDICTION AND VENUE

7. This Court has concurrent jurisdiction with the Superior Court over the parties and the subject matter of this action pursuant to M.G.L. c. 231A, §§ 1 and 5; c. 185, §§ (1)(k) and (1)(r); and c. 40, §53 and the Land Court’s ancillary jurisdiction to settle entire controversies.

8. This Court has personal jurisdiction over Defendants pursuant to M.G.L. c. 223A because each Defendant has transacted business in Massachusetts, and/or resides in Massachusetts.

9. Venue is proper in this Court because it affects land in Worcester County, Massachusetts and all Defendants conduct business in Worcester County, Massachusetts.

FACTS

10. Charles E. Morneau was the prior Trustee (“Prior Trustee”) of the Trust, which owns 155.24 acres of undeveloped land at 364 West Street in the northern tip of Hopedale, Massachusetts (the “Property”).

11. 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”).

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

13. 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, and the non-shaded portion is the Forestland.

14. 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.

15. 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.

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

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

18. 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.

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

20. On or about June 27, 2020, the Prior Trustee of the Property entered into a Purchase and Sale Agreement with 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 (“P&S”).

21. 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 of c. 61 forestland 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.

22. On or about July 9, 2020, 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, triggering the Town’s right of first refusal and ripening into an irrevocable option (the “Option”). The Notice is attached hereto as **Exhibit 3**.

23. 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.

24. The Town informed the Prior Trustee and the Railroad that the Town was considering exercise of its statutory 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**.

25. 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 August 26, 2020 letter attached hereto as **Exhibit 5**.

26. 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 the Notice was not defective due to its inclusion of the Wetlands in the purchase price. See October 7, 2020 letter attached hereto as **Exhibit 6**.

27. 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.

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

29. 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 Option to purchase the Forestland. See September 10, 2020 report attached hereto as **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 Option. The Finance Committee did not have any further details of the gift offer 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,

or approximately half of the cost of the purchase of the Property, including debt service. Id., Exhibit C.

30. Just two days after the Finance Committee Due Diligence Report and four days after the Town informed the Railroad it was moving forward to exercise its 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 Option.

31. 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.

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

33. On the same day, the Prior Trustees 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.

34. On or about October 15, 2020, the Railroad informed the Town of its bait and switch land deal but did not provide a further formal notice pursuant to c. 61 or recognize the Town's Option. See October 15, 2020 letter attached hereto as **Exhibit 9**.

35. The Prior Trustee and the Railroad never provided the Town with a formal notice of Prior Trustee's intent to sell the Forestland to the Railroad for Railroad use through sale of 100% beneficial interest and appointment of the Delli Priscoli and Milanoski as Trustees, in violation of the requirements of c. 61.

36. 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 and/or conversion of land taxed under c. 61 for non-forest purposes giving rise to a separate and independent Option in the Town.

37. 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 October 17, 2020 letter attached hereto as **Exhibit 10**.

38. 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 Notice, which could not be withdrawn, and that the Town has a separate and independent opportunity to exercise its statutory Option to the purchase the Forestland based on the sale of 100% of the beneficial interest in the Trust to the Railroad. See October 21, 2020 letter attached hereto as **Exhibit 11**.

39. 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 control of the Property in order for the Town to develop a new water supply. Ex. 2.

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

41. 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).

42. The members of the Town spoke overwhelmingly in favor of acquiring the 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.

43. 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.

44. 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.

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

46. The Board, on October 30, 2020, voted to exercise its 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**.

47. 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, in a civil action 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.

48. On November 2, 2020, the Town recorded notice of the decision to exercise the 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.

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

50. The Board validly exercised the Option to purchase the c. 61 Forestland on behalf of the Town.

51. The Railroad refused to agree to sell the c. 61 Forestland to the Town despite the Town’s valid exercise of its Option.

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

53. The Railroad, just before a 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.

54. 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 been triggered or had ripened.

55. 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.

56. On February 5, 2021, the Hopedale Board of Water and Sewer Commissioners requested that the Board cease and desist from any further negotiations or agreement with the Railroad with respect to water rights for the Town. See February 5, 2021 letter attached hereto as **Exhibit 16**. 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.

57. 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 violated the Town's Option pursuant to M.G.L. c. 61, the Board had not been authorized to enter into it and it would violate Article 97. See Demand Letter attached hereto as **Exhibit 17**.

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

59. The Settlement Agreement was executed between the Board and the Railroad on February 9, 2021 and is attached hereto as **Exhibit 18**.

60. The Settlement Agreement is in direct conflict with what the Town voted to appropriate at Town Meeting and is in excess of the Board's authority.

61. In the Settlement 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.

62. 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.

63. The Settlement Agreement provides for purchase of less than a third of the land at a higher cost per acre. The approximate cost per acre of Forestland that was authorized was \$9,026; the Settlement Agreement required that the Town pay \$14,687.50 per acre of Forestland.

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

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

66. The Settlement Agreement was starkly inconsistent with this expressed purpose as it allows the Railroad to acquire and develop 90 of the 130 acres of Forestland to use it for industrial purposes.

67. The Town Meeting vote authorized the appropriation only in the event that the Option 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.

68. In the Settlement Agreement, the Board also agreed to waive the Town's c. 61 Option.

69. In the Settlement Agreement, the Board also agreed to file a Stipulation of Dismissal in this action.

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

71. In the Settlement Agreement, the Board also agreed 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.

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

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

74. In the Settlement Agreement, 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.

75. The Town Meeting vote expressly noted that the acquisition of the Property was for conservation and recreation purposes.

76. 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.

77. 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.

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

79. On or about February 10, 2021, the Town filed its Stipulation of Dismissal of this action.

80. On March 2, 2021, the Hopedale Citizens brought suit in Worcester Superior Court against the Town of Hopedale, the Board of Selectmen and the Railroad Defendants to enjoin the execution of the Settlement Agreement and require the Town to enforce its full c. 61 Option because the key provision of the Settlement Agreement lacked authorization – namely, the Board of Selectmen only had authority from Town Meeting to exercise the Option to purchase the entire 130 acres of Forestland and did not have the authority to acquire any lesser portion of the Forestland. The action is styled Reilly et al v. Town of Hopedale et al., No. 2185-cv-00238.

81. After appeal of the denial of the motion for preliminary injunction, on March 25, 2021, the Single Justice of the Appeals Court (Meade, J.) enjoined the Town from paying any funds or transferring any property interests under the Settlement Agreement.

82. While the Appeals Court order remained in force, the Railroad Defendants again began clearing the Forestland.

83. On September 9, 2021, the Superior Court (Goodwin, J.) entered a Temporary Restraining Order against the Railroad Defendants and on September 24, 2021 entered a Preliminary Injunction against the Railroad Defendants from any further land-clearing. Memorandum and Order on Motion for Preliminary Injunction attached hereto as **Exhibit 19**. In issuing the Preliminary Injunction, the Superior Court noted that the plaintiffs would suffer irreparable harm without the injunction because “[o]nce trees are removed, they are gone for the foreseeable future” and the Railroad Defendants’ claim that delay would cause them harm “pales in comparison.” Ex. 21, pp. 4-5.

84. On November 4, 2021, the Superior Court (Goodwin, J.) issued its decision on the parties’ cross-motions for judgment on the pleadings, entering judgment for the Citizen Plaintiffs on Count I, permanently enjoining the execution of the Settlement Agreement without Town Meeting authorization. See Memorandum of Decision and Order on Cross-Motions for Judgment on the Pleadings, attached hereto as **Exhibit 20**.

85. Judge Goodwin also extended the injunction against the Railroad Defendants’ land-clearing activities for sixty (60) days to give the Town time to decide whether to seek Town Meeting authorization of the Settlement Agreement or seek to enforce the Town’s full c. 61 rights.

86. Judge Goodwin made findings of fact and law that are now law of the case including, that “it is undisputed that the Town attempted to carry out the steps necessary to exercise its Option” (Ex. 20 at 5); that the “Railroad Defendants’ attempt[ed] to circumvent Chapter 61, s. 8, process by purporting to acquire only the ‘beneficial interest’ in the forest land while undertaking commercial operations . . . [and] court cannot ignore Railroad Defendants’ initiation of land clearing operations after the Town issued a notice of intent” (*id.* at 11); and that the Town could either “seek the Town Meeting authorization necessary to validate the Settlement Agreement or [] take the necessary steps to proceed with its initial decision to exercise the Option to the entire Property” (*id.* at 12). The Town was uncertain about the ruling and whether Judge Goodwin had ruled that the Town did, in fact, retain its c. 61 rights.

87. The Court granted the Town’s assented to request to extend the injunction to January 31, 2022 while the Town filed a Motion for Clarification of the Judgment.

88. The Railroad supported and joined the Town’s Motion for Clarification of the Judgment.

89. On December 14, 2021, the Superior Court (Goodwin. J.) issued an order of clarification for the Town, holding that 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 G.L. c. 61, s. 8 Option” and that, accordingly, “the Settlement Agreement would fail to take effect” if the Board does not obtain authorization at Town Meeting and the Town would retain “the right to continue attempting to enforce the Option”. See Memorandum of Decision on Defendant Town of Hopedale’s Motion for Clarification, attached hereto as **Exhibit 21**.

90. The Court’s order held “the Settlement Agreement is not effective”. Ex. 21 at 2.

91. The Court further wrote that the Railroad cannot get all of the benefits of the agreement and give nothing up in exchange, a result that “would be unjust, to say the least.” Ex. 22 at n. 3.

92. The Town, thereafter, on December 30, 2021, filed its Motion to Vacate the Stipulation of Dismissal in this Court. The Town also sought an extension of the injunction in its Motion to Vacate.

93. The Citizens filed their motion to intervene, attaching their Intervenor Complaint including Count I, seeking to vacate the stipulation of dismissal.

94. The Land Court denied the Town’s motion to vacate and then denied the Citizens’ motion to intervene as moot.

95. A later Town Meeting rejected the authorization of the acquisition provisions of the Settlement Agreement.

96. The Town and the Citizens sought an injunction against further land clearing of the Forestland pending appeal of the Land Court’s decisions. That injunction was denied.

97. The Citizens appealed the Land Court’s rulings and the Superior Court’s Judgment on its Count II. Neither the Town nor the Railroad Defendants appealed the Superior Court’s Judgment as clarified.

98. The Railroad Defendants refused to agree to maintain the status quo and restarted land-clearing activities.

99. By August 2022, the Railroad Defendants had illegally cleared over 100 acres of the Forestland. See series of photos of the destruction attached hereto as **Exhibit 22**. Exhibit 22.1 shows how the Forestland appeared on September 10, 2020 after the Railroad Defendants agreed to stop work pending this litigation. Exhibit 22.2 shows the Forestland as it appeared on

June 12, 2022, after the Land Court denied the injunction pending appeal and after the Railroad Defendants cut down the trees. Exhibit 22.3 shows how the Forestland appeared on July 13, 2022, after the Railroad Defendants harvested and removed much of the felled timber. Exhibit 22.4 shows how the Forestland appeared on November 2, 2022 after the Railroad Defendants constructed roads and altered the grade.

100. The Railroad Defendants further constructed roads into and across the Forestland, including the removal of rocks and stones, creating new grading and drainage patterns and significantly changed the landscape. Ex. 22.4.

101. The Railroad Defendants' clear-cutting of 100 acres of Forestland significantly reduced the value of the Forestland.

102. On information and belief, the Railroad Defendants sold the downed trees for timber at a significant financial gain.

103. On information and belief, the Railroad Defendants conducted investigations, including the drilling of test wells, in and around the Wetlands and Forestland to explore the viability of a private water well.

104. On information and belief, no such water source was located.

105. The removal of 100-plus acres of forested vegetation, construction of roads, and the removal of rocks and stones have all affected and changed the ability of the Forestland to absorb and discharge stormwater runoff.

106. On information and belief, the Railroad Defendants' grading activities and well investigations caused further damage to the Forestland.

107. On March 7, 2023, the Appeals Court issued its decision on the two related cases. See Decision, attached hereto as **Exhibit 23**.

108. The Appeals Court affirmed the Citizen Plaintiffs' Superior Court Judgment as clarified.

109. Specifically, the Appeals Court vacated the denial of the Citizens' motion to intervene in this action, noting that "[t]he citizens' motion sought to effectuate the favorable judgment they had obtained on count I of their complaint in the Superior Court, including – but not limited to – the injunction the citizens had obtained to preserve the forest land." Ex. 23.

110. The Appeals Court ruled that the Citizen Plaintiffs are entitled to enforce the Judgment that the Settlement Agreement is not effective, and that the Town can pursue its c. 61 Option.

111. The Appeals Court also recognized that the Citizens are entitled to protect their Judgment through injunctive relief.

COUNT I
ENFORCEMENT OF JUDGMENT (M.G.L. c. 231A, §§ 1 and 5)
VACATE STIPULATION OF DISMISSAL

112. Intervenor-Plaintiffs incorporate the preceding paragraphs as if fully set forth herein.

113. Intervenor-Plaintiffs succeeded in enjoining the execution of the Settlement Agreement because the material term lacked Town Meeting authorization.

114. The Superior Court ruled, and the Appeals Court has affirmed, that the Settlement Agreement is not effective.

115. The Superior Court ruled, and the Appeals Court has affirmed, that the Town may renew its attempt to enforce its Option.

116. The sole reason that the Town filed the Stipulation of Dismissal was because it was a provision of the ineffective Settlement Agreement.

117. The Railroad Defendants disregard the authority of the Superior Court Order and the Appeals Court Decision and maintain that the Settlement Agreement remains in full force and effect.

118. The Intervenor-Plaintiffs have standing to enforce their Judgment and to obtain further relief based on that judgment as necessary and proper.

119. To effectuate the Superior Court's Order, secured by the Intervenor-Plaintiffs and affirmed by the Appeals Court, the previously entered Stipulation of Dismissal must be vacated and this action must resume.

COUNT II
ENFORCEMENT OF JUDGMENT (M.G.L. c. 231A, §§ 1 and 5)
PRELIMINARY INJUNCTION AGAINST RAILROAD DEFENDANTS FROM ANY
LAND-CLEARING OR DEVELOPMENT ACTIVITIES IN THE FORESTLAND UNTIL
DISPOSITION OF THIS ACTION

120. Intervenor-Plaintiffs incorporate the preceding paragraphs as if fully set forth herein.

121. The Railroad Defendants have illegally caused extensive damage to the c. 61 Forestland in violation of c. 61.

122. The Railroad Defendants have illegally caused damage to the c. 61 Forestland in violation of injunctive orders from the Massachusetts Appeals Court.

123. Following the Superior Court Judgment that entered, which ruled that the Settlement Agreement is not effective and the Town could resume the enforcement of its c. 61 Option, the Railroad Defendants refused to agree to maintain the status quo.

124. Despite the pending appeals of both actions and the clear language of the clarified Judgment, the Railroad Defendants clearcut over 100 acres of Forestland, constructed multiple

roads through the Property, altered the land and the grade and drilled an unknown number of test wells.

125. On information and belief, the Railroad Defendants entered into a letter agreement with the Town to provide notice before it resumes development of the Property,

126. That letter agreement is insufficient to protect the Forestland given the Railroad's utter disdain for the judicial process and the harm it has already senselessly caused.

127. Only an explicit Court Order preliminarily enjoining the Railroad Defendants can protect against further land-destruction alterations and activities until full resolution of this dispute.

128. The Railroad Defendants must be restrained from causing further destruction to the Forestland including construction or maintenance of roads, grading, removal of rocks or stones, drilling of any wells, and transport of any material into or out of the Property.

COUNT III
DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

A. Declaration that the harm to the Forestland caused by the Railroad Defendants including without limitation clearing the Forestland, constructing roads, causing stormwater runoff and boring test wells and the Railroad Defendants' enrichment by selling the cut timber requires reduction of the purchase price to reflect cost to replace trees, restore the Forestland and disgorge the Railroad Defendants.

129. Intervenor-Plaintiffs incorporate the preceding paragraphs as if fully set forth herein.

130. There exists an actual controversy concerning whether the Town is authorized to pay the full purchase price under the Option because the Railroad Defendants have cleared significant portions of the Forestland, thus reducing its value.

131. Intervenor-Plaintiffs seek a judicial determination that the Town's ultimate purchase price must be reduced to account for the Railroad Defendants' past and ongoing damage to the Forestland through land-clearing and development operations. See Town of Brimfield v. Caron, 2010 WL 94280, at *13 (Mass. Land Ct. Jan. 12, 2010) (conveyance of c. 61 land was unlawful sale or conversion, purchase price of town's right of first refusal in dispute due to purchaser's actions after conveyance); Town of Brimfield v. Caron, 2015 WL 5008125, at *7 (Mass. Land Ct. Aug. 21, 2015) (after trial, offsetting the town's purchase price of its c. 61 option to account for the value wrongfully extracted and removed materials).

132. A declaratory judgment would terminate these uncertainties.

B. Injunction enjoining Town from spending \$1,175,000 on the purchase price due to the destruction of the Forestland and the enrichment of the Railroad Defendants.

133. Intervenor-Plaintiffs incorporate the preceding paragraphs as if fully set forth herein.

134. Town Meeting authorized the acquisition of the Forestland pursuant to the Town's c. 61 Option and at the value set forth in the P&S, \$1,175,000.

135. Since that authorization and during the pendency of the litigation over the Town's right to exercise its c. 61 Option, the Railroad Defendants have cleared over 100 acres of Forestland.

136. This land clearing was in violation of c. 61.

137. The Railroad Defendants also conducted well explorations on, near and around the Forestland, including the drilling of test wells, in violation of c. 61.

138. The Railroad Defendants constructed roads and engaged in other land altering pre-development work, in violation of c. 61.

139. The Railroad Defendants' land clearing, development and well boring activities have vastly reduced the value of the Forestland as forestland.

140. The Railroad Defendants, during the pendency of the litigation over the Town's right to exercise its c. 61 Option, then sold some significant portion of the 100 acres of "harvested timber", thus enriching themselves.

141. The Town must be restrained from raising or expending money or incurring obligations purporting to bind the Town beyond its legal authority.

142. The Intervenor Plaintiffs seek an injunction against the Town purchasing the Forestland for \$1,175,000 because that authorization represents the value of the undisturbed and unaltered Forestland. Accordingly, the Town's purchase price for the Forestland must be reduced to account for the damage caused and the enrichment obtained by the Railroad Defendants.

C. Injunction requiring the Railroad Defendants to restore or pay the Town to restore the Forestland to its previous condition.

143. Intervenor-Plaintiffs incorporate the preceding paragraphs as if fully set forth herein.

144. Town Meeting authorized the acquisition of the Forestland pursuant to the Town's c. 61 Option and at the value set forth in the P&S, \$1,175,000.

145. Since that authorization and during the pendency of the litigation over the Town's right to exercise its c. 61 Option, the Railroad Defendants have cleared over 100 acres of Forestland.

146. This land clearing was in violation of c. 61.

147. The Railroad Defendants conducted well explorations on, near and around the Forestland, including the drilling of test wells, in violation of c. 61.

148. The Railroad Defendants constructed roads and engaged in other land altering pre-development work, in violation of c. 61.

149. This land clearing, development and well boring vastly reduced the value of the Forestland as forestland.

150. The Railroad Defendants must be ordered to restore the Forestland to its original condition as part of the Town's purchase of the Forestland or the costs of such restoration must be offset from the Town's purchase price so that the Town purchases that which Town Meeting authorized.

151. The Railroad Defendants must be ordered to replant the same number and size of trees or across the same area of land that it removed from the Forestland.

152. The Railroad Defendants must be ordered to deconstruct any and all roads that they constructed in the Forestland and return the Forestland to its previous grade.

153. The Railroad Defendants must be ordered to fill in all test wells.

154. The Railroad Defendants must be further ordered to restore any other land disturbances to the original state of the Forestland.

PRAYER FOR RELIEF

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

- a. Vacate the Stipulation of Dismissal in this case and allow the action to proceed;
- b. Preliminarily and permanently enjoin the Railroad Defendants from altering, clearing, or in any way damaging, or 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;

- c. Enter a declaratory order that the final purchase price of the c. 61 Forestland by the Town from the Railroad Defendants must be reduced to account for the Railroad Defendants' land clearing and land disturbing activities;
- d. Enjoin the Town from purchasing the c. 61 Forestland for any amount that does not account for the reduction in value caused by the Railroad Defendants' land clearing and land disturbing activities;
- e. Order the Railroad Defendants to restore the Forestland to its prior state or pay the costs to restore the Forestland to account for the Railroad Defendants' land clearing and land disturbing activities, including without limitation: replanting of the trees felled and removed; deconstruction of interior roads; returning the land to the original grade; and filling in any test wells;
- f. Enter a judgment on each Count for the Intervenor-Plaintiffs;
- g. Award Intervenor-Plaintiffs their attorneys' fees and costs incurred in this action; and
- h. 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,
MICHELLE SMITH, MELISSA MERCON
SMITH , SHANNON W. FLEMING, and
JANICE DOYLE

By their attorneys,

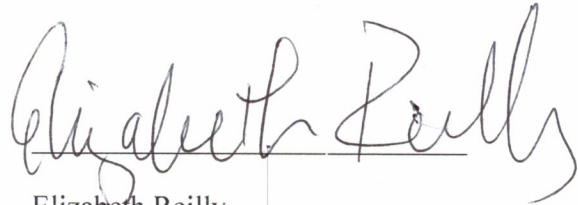
/s/ Harley C. Racer

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Dated: January 4, 2024

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 a horizontal line.

Elizabeth Reilly

Dated: 1-3-24