

MassDOR - Massachusetts Department of Revenue
 Division of Local Services
 What if ... Scenario Worksheet for FY 2021

Hopedale - 138

CLASS	VALUE	%	
Residential	728,758,809	87.8353	R & O %
Open Space	0	0.0000	87.8353
Commercial	44,813,699	5.4013	
Industrial	32,771,500	3.9499	C I P %
Personal Property	23,343,580	2.8135	12.1647
Total	829,687,588	100.0000	

CLASSIFICATION OPTIONS

RESIDENTIAL EXEMPTION	
# of Eligible Parcel	0.000000
Res Parcel Count	0
Res Exemption %	0.0000
Total Res Value Net	728,758,809

SMALL COMMERCIAL EXEMPTION	
# of Eligible Parcel	0
Total Value of Elig	0
Comm Exemption	0.0000
Total C & I Value Net	77,585,199

ENTER A LEVY (ESTIMATED IF NECES:

Levy	15,935,502
Single TaxRate	19.21

ENTER CIP SHIFT RANGE

Shift Range	1.50	1.75
Shift Increment %		5.00
Max Shift Allowed		1.75

Note: This table should be used for planning purposes only. Actual calculations may differ slightly due to rounding. For actual calculations, complete Recap.

CIP Shift	Res Factor	Share Percentages						Levy Amounts					Estimated Tax Rates					
		Res SP	OS SP	Comm SP	Ind SP	PP SP	Total SP	Res LA	OS LA	Comm LA	Ind LA	PP LA	Total LA	Res ET	OS ET	Comm ET	Ind ET	PP ET
1.5000	0.9308	81.7530	0.0000	8.1020	5.9249	4.2203	100.0000	13,027,745		1,291,086	944,155	672,518	15,935,504	17.88	0.00	28.81	28.81	28.81
1.5500	0.9238	81.1447	0.0000	8.3720	6.1223	4.3609	100.0000	12,930,820		1,334,123	975,626	694,935	15,935,505	17.74	0.00	29.77	29.77	29.77
1.6000	0.9169	80.5365	0.0000	8.6421	6.3198	4.5016	100.0000	12,833,895		1,377,159	1,007,098	717,353	15,935,505	17.61	0.00	30.73	30.73	30.73
1.6500	0.9100	79.9283	0.0000	8.9121	6.5173	4.6423	100.0000	12,736,970		1,420,195	1,038,570	739,770	15,935,505	17.48	0.00	31.69	31.69	31.69
1.7000	0.9031	79.3200	0.0000	9.1822	6.7148	4.7830	100.0000	12,640,045		1,463,231	1,070,042	762,187	15,935,505	17.34	0.00	32.65	32.65	32.65
1.7500	0.8961	78.7118	0.0000	9.4523	6.9123	4.9236	100.0000	12,543,120		1,506,267	1,101,514	784,604	15,935,506	17.21	0.00	33.61	33.61	33.61

*account for
 (Penny difference)*

Hearing on Preliminary Injunction and Lis Pendens scheduled on: 11/23/2020 10:00 AM

Initial Case Management Conference 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.

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. *Garcia v. Dep't. of Housing and Comty. Dev.*, 480 Mass. 736, 747 (2018); *GTE Prods. Corp. v. Stewart*, 414 Mass. 721, 722-724 (1993); *Packaging Indus. Group, Inc. v. Cheney*, 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. *Garcia, supra*, 480 Mass. at 747; *Loyal Order of Moose, Inc., Yarmouth Lodge #2270 v. Brd. Of Health of Yarmouth*, 439 Mass. 597, 601 (2003); *Commonwealth v. Mass. CRINC*, 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. *Town of Brimfield v. Caron*, 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. *Town of Sudbury v. Scott*, 439 Mass. 288, 297 (2003); *Town of Billerica v. Card*, 66 Mass. App. Ct. 664, 668 (2006); *Smyly v. Town of Royalston*, 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.

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

Notice of docket entry sent to counsel via email.

**COMMONWEALTH OF MASSACHUSETTS
LAND COURT DEPARTMENT
OF THE TRIAL COURT**

WORCESTER, ss.

Case No. 20 MISC 000467 (DRR)

TOWN OF HOPEDALE,

Plaintiff,

v.

JON DELLI PRISCOLLI AND MICHAEL
R. MILANOSKI, as Trustees of the ONE
HUNDRED FORTY REAL ESTATE
TRUST, and GRAFTON & UPTON
RAILROAD COMPANY,

Defendants.

**ORDER REFERRING CASE
TO DISPUTE RESOLUTION SCREENING SESSION**

On November 23, 2020, plaintiff Town of Hopedale, and Defendants Jon Delli Priscolli, Michael R. Milanoski, and Grafton & Upton Railroad Company appeared for a case management hearing via zoom. Following the hearing, counsel for both parties agreed that the case may be suitable for mediation. This court is convinced that this case may be capable of being resolved by the parties, and that the parties would benefit greatly by having a trained neutral serve as a mediator. To this end, the court exercises the authority vested in it to refer the case for mandatory mediation screening by a court-affiliated provider and encourages the parties to mediate by zoom during the pandemic. If, following screening, the parties are not prepared to mediate, or if after engaging in mediation, the case is not resolved consensually, the court will hear and determine the case.

Pursuant to Supreme Judicial Court Rule 1:18, “Uniform Rules on Dispute Resolution,” the court enters the following order for referral of this case to one of the Land Court Department’s court-connected dispute resolution services. It is

ORDERED that this case, Land Court Miscellaneous 20 MISC 000467 (DRR), is REFERRED for a mediation screening to

REBA Dispute Resolution, Inc.
295 Devonshire Street
Sixth Floor
Boston, MA 02110
(617) 854-7555
adr@reba.net

one of the court’s approved court-connected dispute resolution services.¹ It is further

ORDERED that the parties contact REBA Dispute Resolution, Inc. (or the provider chosen pursuant to footnote one) to schedule a mediation screening that is to occur as soon as possible, and in no event later than January 21, 2021. The screening is to take place with all parties and their counsel personally present with a neutral on the panel of the mediation service provider. It is further

ORDERED that the parties shall promptly report to the court, in writing, the outcome of the screening session by January 25, 2021. If the parties agree to proceed with alternative dispute resolution, they shall schedule and participate in that session as soon as possible, and shall immediately advise the court in writing of the particulars of their session. If, after participating in the screening session, the parties do not wish to proceed with alternative dispute resolution, or if they do, but are unable to settle their case, the parties are to notify the court in writing.

¹ The parties are free to select any of the Land Court’s court-affiliated ADR providers to conduct the mandatory screening; lists of those providers are available on the Land Court’s website or from Sessions Clerk Jennifer Noonan. Unless the parties by prompt agreement elect to use another of the affiliated providers, the screening is to be conducted by a neutral on the panel of the provider indicated in this Order.

SO ORDERED

By the Court (Rubin, J.)

/s/ Diane R. Rubin

Attest:

/s/ Deborah J. Patterson

Deborah J. Patterson,
Recorder

Dated: November 24, 2020