

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

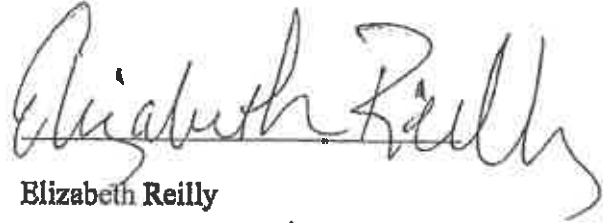
By their attorneys, 

David E. Lurie, BBO# 542030
Harley C. Racer, BBO# 688425
Lurie Friedman LLP
One McKinley Square
Boston, MA 02109
Tel: 617-367-1970
Fax: 617-367-1971
dlurie@luriefriedman.com
hracer@luriefriedman.com

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 dark ink and is positioned above the printed name.

Elizabeth Reilly

Dated: 3/3/24

