

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

GRAFTON & UPTON RAILROAD)
COMPANY, JON DELLI PRISCOLI AND)
MICHAEL R. MILANOSKI, AS TRUSTEES)
OF ONE HUNDRED FORTY REALTY)
TRUST,)
Plaintiffs,)
v.)
TOWN OF HOPEDALE, THE HOPEDALE) Civil Action No. 4:22-cv-40080-ADB
SELECT BOARD, BY AND THROUGH ITS)
MEMBERS, GLENDA HAZARD, BERNARD)
STOCK, AND BRIAN KEYES, AND THE)
HOPEDALE CONSERVATION)
COMMISSION BY AND THROUGH ITS)
MEMBERS, BECCA SOLOMON, MARCIA)
MATTHEWS, AND DAVID GUGLIELMI,)
Defendants.)

AFFIDAVIT OF EDWARD J. BURT

Now comes Edward J. Burt, who on oath deposes and says as follows:

BACKGROUND

1. I am the Chair of the Board of Water and Sewer Commissioners (“WS Board”) for the Town of Hopedale (the “Town”). I submit this Affidavit in support of the Town’s Opposition to Grafton & Upton Railroad’s (“GURR”) Motion for Preliminary Injunction.
2. GURR’s development of 364 West Street (the “Site”) would cause substantial harm to the Town and its residents because that development will adversely impact the Town’s vulnerable present and future water supply.
3. The Site contains approximately 130 acres of forestland (the “Forestland”), and 25 adjacent acres of wetlands (“Wetlands”), both located within the Blackstone River

Watershed. This Watershed is part of an extensive wetlands system that is hydrologically connected to the Town's current water supply. GURR's development of the Site into an industrial railyard would impact the wetlands and Watershed and would therefore impact the Town's water supply.

4. Additionally, the Site contains one of the Town's only viable areas for future water sources. However, for reasons that I will explain below, industrial development of the Site would greatly limit, if not eliminate, the viability of those water sources.

The Town's Water Crisis

- 5 The quantity of the water supply has been an ongoing concern in Hopedale—one that the Town has worked diligently to address—for decades. Hopedale has three sources of well water comprised of six wells, one of which is a bedrock well. Drilling a bedrock well is financially risky, as it is difficult to identify the exact correct location for one, and therefore the fact that the Town has drilled any is evidence in and of itself that the Hopedale's search for water has been extensive and desperate. The Town previously had two bedrock wells, but one was shut down officially deactivated in February 2022 due to high pretreatment PFAS levels, thereby worsening Hopedale's water shortage.
6. The Town has also attempted to identify new sources of water near its existing well fields and infrastructure. However, source drilling exploration in these areas has not successfully drawn enough water to support new wells. This is likely because “[t]he [b]asic obstacle to future groundwater development in Hopedale is... the geological conditions of the area. The shallowness of bedrock prevents the construction of wells... of any significant depth in most locations. The experience in sections of the Mill River Valley... has been that the water bearing material has been fine sands and clay; too fine

to yield water at practical rates.” In other words, areas for potential expansion of Hopedale’s water supply are limited.

7. And these water supply issues are already limiting development in the Town. In response to a proposal for a 556- unit residential development in 2018, the Hopedale Water Department noted that supplying water for the development “would be very difficult and would certainly require water restrictions year-round. An additional source would be the best solution.” That development has been scrapped.

The Site Presents the Only Viable Option for Increasing the Town’s Water Supply

8. In 2019, various boards in the Town took steps to identify new water sources. The WS Board commissioned a Fracture Trace Study, and the Board of Selectmen engaged an environmental consulting firm, Environmental Partners, to generate a Limited Desktop Site Screening Report (LDSSR), attached here as **Exhibit 1**. The findings of these reports demonstrate that preserving the Site as a location for future well drilling is imperative. The LDSSR concludes, among other things, that the Town’s acquisition of the Site would “significantly increase the potential area for public water supply explorations,” *and* provide “additional protection for the Town’s existing public water supply sources” since the Site is located upstream and upgradient of the Town’s existing public water supply sources.
9. However, the LDSSR also found that “[f]urther expansion of the railway operations on the parcel could lead to additional site constraints.” This is because under MassDEP Water Supply Regulations 310 CMR 22.21, the Town must own or control a certain protective radius around any well or wellfield. If the area within the radius of any given well were to be developed, the Town could not use that well as a water source.

10. Supported by this information, the Hopedale Select Board joined the WS Board, Conservation Commission and Finance Committee at the Town's October 24, 2020 Special Town Meeting to urge the Town to acquire the Forestland. Special Town Meeting unanimously voted to authorize the Select Board to do so.

Rail Development at the Site Will Dramatically Impact the Vulnerable Water Supply

11. Due to the clear results of the studies the WS Board had commissioned, and the clear mandate from Special Town Meeting, the WS Board has remained steadfast in its position that the Town needed to acquire the Forestland in order to secure the future of Hopedale's water supply.

12. In addition, the WS Board began sounding the alarm that if GURR acquired the Site, not only could this prevent the Town from utilizing the Site as a future water supply, but it could negatively impact Hopedale's vulnerable existing water supply. This is because the Site is upland of the Wetlands, and therefore any industrial development of the Site would result in less groundwater to feed, and a greater risk for contamination of, the watershed.

13. On December 20, 2021, the WS Board sent a letter to the Select Board, attached here as **Exhibit 2**, stating that if GURR were to acquire the land, it was "evident that GURR will clear a significant portion of the Forest," and that "[a]n EPA estimate has calculated that the impact of the future burden caused by the lost forest watershed to be more than a million dollars, plus costs associated with related water supply goals." This is because replacing the Forestland with impervious cover within a watershed can dramatically increase the amount of phosphorous, nitrogen and other substances in storm water runoff, damaging the Town's water supply and requiring over \$1 million of clean up. The Town

will be financially responsible for treating the water supply for any contamination, even if the Town did not cause the contamination in the first place.

14. Further, the EPA impact estimate was based on 50 acres of development per GURR's public stated plans at the time. Regrettably, GURR has now cleared approximately double that: 100 acres of the Forestland.

15. The WS Board sent yet another letter to the Select Board on February 18, 2022, attached here as **Exhibit 3**, restating its strong objection to GURR's proposal to clear the Site. In response to these critical and ongoing concerns, the WS Board wrote that "the negative impact to the current water supply caused by any more land clearing within the West St watershed would only exacerbate today's water supply concerns and issues. This point cannot be emphasized enough."

16. The Town had a Special Town Meeting on March 26, 2022, during which I presented a slide show about the necessity of preserving the Site. This slide show is attached as **Exhibit 4**. As indicated in the slides, it was (and is) the strong position of the WS Board that, in order to protect the Town's current water supply and assure exploration of future water supply, the Town must acquire the Forestland. *See Exhibit 4 at Slide 2.*

GURR Now Intends to Develop the Site More Intensely

17. As recently as June, 2021, GURR indicated on an Industrial Rail Access Program (IRAP) funding application submitted to the Massachusetts Department of Transportation that its intentions for the land in question were to build two large warehouses in addition to handful of other smaller buildings. **See Exhibit 5**. However, GURR then revealed for the first time on July 19, 2022, that it had a new "plan" to expand its proposed development from seven warehouses to a complex of over twenty buildings and warehouses that span

the entire Site. The magnitude of this hypothetical expansion exacerbates many of the water supply concerns I have already outlined, making this new proposal more likely to result in even more devastating effects.

18. I urge the Court to deny the preliminary injunction that GURR is requesting. If GURR continues unimpeded, the site development could result in devastating, long-lasting, and substantial harm to the Town's current and future water supply.

Edward J. Burt

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system was sent electronically to counsel of record for all parties on this 4 day of August, 2022.

/s/ Kristen Gagalis
Kristen Gagalis