

E-FILED

11/24/2021

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

SUPERIOR COURT  
C.A. NO. 2185CV00238D

E-Documents sent 11/30/21

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

Plaintiffs,

v.

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

Defendants.

ASSENTED TO EMERGENCY  
MOTION OF DEFENDANTS TOWN  
OF HOPEDALE AND HOPEDALE  
BOARD OF SELECTMEN FOR STAY  
OF JUDGMENT PROVISION

#47

The defendants Town of Hopedale and Louis J. Arcudi, III and Brian R. Keyes, named in their capacity as members of the elected Hopedale Board of Selectmen (hereinafter "Town" or "Board"), hereby submit an Emergency Motion regarding a provision of the November 10, 2021 Judgment ("Judgment") and the Court's Order entered in the above captioned matter. A true copy of the Judgment is attached to this motion for reference, and the relevant provision is also set forth on pages 12-13 of the Memorandum of Decision and Order.

Superior Court Rule 9A(1)(c) Certification

The Town certifies that Town Counsel contacted counsel for all other parties and said counsel have assented to the within motion.

November 30, 2021  
ALLOWED  
JUDGE: June DeS  
Kurt Clerk

In support of this motion, the Town states that the Judgment found in favor of the Plaintiffs on Count I of the Verified Complaint, and in favor of the Town and other defendants ("Railroad Defendants") on Counts II and III. On November 22, 2021, the Town served a Motion for Clarification of the Judgment upon counsel for the other parties. Pursuant to Superior Court Rule 9A, however, it may be the first full week of December before the Town can file the Rule 9A package with the Court. Counsel for the Plaintiffs and for the Railroad Defendants have informed Town Counsel that, while assenting to this Emergency Motion, they will each be submitting an opposition or response to the Town's Motion for Clarification, and all pleadings shall be filed in conformance with Rule 9A.

In addition to the Memorandum of Decision's discussion as to Counts I - III, the Court included an Order enjoining the Railroad Defendants from performing any clearing or other site work on the subject Property for a period of 60 days after entry of judgment. While this injunction is expressly directed at the Railroad Defendants, the Court stated in relevant part:

While G.L. c.40, §14, does not provide any particular time period in which a town must hold a town meeting to authorize the acquisition of land, the Legislature has expressed a view on the appropriate time frame for such matters in G.L. c.61, §8, which gives a town 120 days to exercise its first refusal option. Because the decision now before the Town is more limited in scope, however, a shorter period of 60 days is appropriate for this temporary injunction.

As a result, the Board of Selectmen is effectively required to either obtain a new Town Meeting vote or take some other action to acquire the Property (the latter being the subject of the Town's Motion for Clarification) *within the same 60 day period*, which will expire on or about January 9, 2022. It is critical to the Town's important interests regarding the Property that the Motion to Clarify the Judgment be considered before the Board can address its next step, but the current 60-day period may expire or be too limited if the early January deadlines stay in place.

Therefore, the Town moves that this honorable Court extend the 60-day injunctive period contained in the Order and Judgment through and including January 31, 2022, such that after the Court rules on the Town's Motion to Clarify, the Board of Selectmen will have sufficient time to act pursuant to the terms of the Judgment.

Defendants,  
TOWN OF HOPEDALE, LOUIS J.  
ARCUDI AND BRIAN R. KEYES,

By their attorney,



Brian W. Riley (BBO# 555385)

KP Law, P.C.

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12th Floor

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(617) 556-0007

[briley@kplaw.com](mailto:briley@kplaw.com)

Dated: November 24, 2021

789154/BOPD/0145

**CERTIFICATE OF SERVICE**

I, Brian W. Riley, hereby certify that on the below date, I served a copy of the foregoing Assented To Emergency Motion of Defendants Town of Hopedale and Hopedale Board of Selectmen for Stay of Judgment Provision, by first class mail and electronic mail, to the following counsel of record:


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Brian W. Riley

Dated: November 24, 2021

<b>JUDGMENT-ON THE PLEADINGS</b>		Trial Court of Massachusetts The Superior Court	
DOCKET NUMBER	2185CVD0238	Dennis P. McManus, Clerk of Courts	
CASE NAME	Reilly, Elizabeth et al vs. Town of Hopedale et al	COURT NAME & ADDRESS Worcester County Superior Court 225 Main Street Worcester, MA 01608	


This action came before the Court, Hon. Karen Goodwin, presiding, upon a motion for judgment on the pleadings,

After hearing or consideration thereof;

\*  
No

**It is ORDERED AND ADJUDGED:**

Judgment to enter for the Plaintiffs on Count I, enjoining the Board of Selectmen and The Town of Hopedale from purchasing land as set forth in the Settlement Agreement and the Railroad Defendants are enjoined for 60 days from the date of this Judgment from carrying out any work on the contested forest land. Counts II and III are hereby dismissed.

DATE JUDGMENT ENTERED 11/10/2021	CLERK OF COURTS/ ASST. CLERK X 
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Date/Time Printed: 11-10-2021 11:22:54

SCV117: 07/2018

Entered and Copies Mailed: 