

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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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.))
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DEFENDANTS’ MOTION FOR LEAVE TO FILE
AFFIDAVIT OF SEAN P. REARDON, P.E.

The defendants, the Town of Hopedale *et al.* (“Hopedale”), hereby submit this motion for leave to file the Affidavit of Sean P. Reardon, P.E. The Affidavit is attached hereto as Exhibit A. As grounds in support, Hopedale states as follows:

1. The plaintiffs, Grafton & Upton Railroad Company (“GURR”) *et al.*, filed this action on July 18, 2022, and since then the lawsuit has progressed on an accelerated schedule. There was a hearing on GURR’s motion for a temporary restraining order on July 19, and then the establishment of an abbreviated briefing schedule for GURR’s motion for a preliminary injunction. Hopedale’s initial brief and affidavits in opposition to the motion were due, and submitted, on August 4, 2022, and Hopedale’s deadline for a sur-reply is tomorrow, August 9, 2022. A hearing on the preliminary injunction motion is set for August 10, 2022.

2. GURR seeks a preliminary injunction against Hopedale's planned taking by eminent domain of 130.18 acres of forestland purportedly owned by GURR. The taking does not include the railroad right of way or any other GURR property currently in use for a railroad purpose. Instead, GURR's motion depends on the argument that the taking will interfere with GURR's alleged future plans to develop the forestland not currently in use for a railroad purpose into a massive "Transloading and Logistics Center," and that therefore the taking is preempted by the Interstate Commerce Commission Termination Act, 49 U.S.C. §10101 et seq. These plans are reflected on a Site Layout Plan attached to GURR's Verified Complaint.

3. Hopedale has retained Mr. Reardon to review the Site Layout Plan, and is offering the attached affidavit to describe the extent to which the Site Layout Plan reflects a future, viable railroad use.

WHEREFORE, Hopedale respectfully requests that this Court grant Hopedale leave to file the attached Affidavit of Sean P. Reardon, P.E.

TOWN OF HOPEDALE, THE HOPEDALE
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MATTHEWS, AND DAVID GUGLIELMI,

By their attorneys,

/s/ David S. Mackey

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Dated: August 8, 2022

CERTIFICATION UNDER LOCAL RULE 7.1

I hereby certify that on August 8, 2022, counsel for the parties conferred in a good faith attempt to resolve the issue presented by this motion, but despite their efforts were unable to do so.

/s/ David S. Mackey

David S. Mackey

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 8th day of August, 2022.

/s/ Sean Grammel

Sean Grammel