

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

LAND COURT DEPARTMENT  
OF THE TRIAL COURT

TOWN OF HOPEDALE,

Plaintiff,

v.

JON DELLI PRISCOLI and MICHAEL R.  
MILANOKSI, as Trustees of the ONE  
HUNDRED FORTY REALTY TRUST, and  
GRAFTON & UPTON RAILROAD  
COMPANY,

Defendant.

CASE No. 20 MISC 000467 (DRR)

**HOPEDALE CITIZENS' MOTION FOR LEAVE TO INTEVENE WITH  
INCORPORATED MEMORANDUM OF LAW**

Elizabeth Reilly and Ten Citizens of the Town of Hopedale<sup>1</sup> ("Hopedale Citizens") seek to intervene as plaintiffs in this case pursuant to Mass. R. Civ. P. 24. The Hopedale Citizens brought an action in Superior Court to enjoin the Settlement Agreement entered into, as a result of this Land Court Action, between the Town of Hopedale's Board of Selectmen and the Railroad Defendants<sup>2</sup> because the key term of the Settlement Agreement – the Town's purchase of a portion of 130 acres of Forestland protected under M.G.L. c. 61 – had not been authorized by Town Meeting vote. The Hopedale Citizens prevailed on this claim to enjoin the property transfer and payment under the Settlement Agreement, first, through entry of a preliminary

<sup>1</sup> 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.

<sup>2</sup> Railroad Defendants include Jon Delli Priscoli and Michael Milanoski as the Trustees of the One Forty Realty Trust, and the Grafton & Upton Railroad Company.

injunction from the Massachusetts Appeals Court and, finally and permanently, through the entry of judgment on the pleadings as to that count in Superior Court. The Superior Court ruled that the Settlement Agreement is ineffective due to lack of authorization, which the Board of Selectmen did not and admittedly cannot now obtain. The Superior Court also enjoined any land clearing activity by the Railroad Defendants until January 31, 2022 to give the Town time to decide whether to seek enforcement of its c. 61 Option to acquire the Forestland, which would require rescission of the Settlement Agreement and reopening this action. The Town has now so decided by filing its Motion to Vacate the Stipulation of Dismissal in this case.

It is beyond dispute that the parties have returned to this Court solely because of the Hopedale Citizens' efforts to protect the public's interest in the Forestland and because of their successes in that effort. The Town's Motion to Vacate and the Railroad Defendants' Opposition to that Motion, each of which refer to and rely heavily upon the Hopedale Citizens' litigation, make this abundantly clear. In fact, the Railroad Defendants' Opposition reveals for the first time publicly that the Settlement Agreement was amended in direct response to the Hopedale Citizens' Notice to Sue by insertion of a severability provision specifically designed to impede the public's ability to obtain relief from the illegal terms of the Settlement Agreement.

Now, to effectuate the injunction obtained by the Hopedale Citizens and to preserve the subject Forestland that the injunction intends to protect, the presence of the Hopedale Citizens is critical and they should be permitted to intervene in order to (1) vacate the Stipulation of Dismissal which was entered only as part of the ineffective Settlement Agreement, (2) obtain a preliminary injunction against any land clearing activities by the Railroad Defendants pending disposition of the claim to vacate the dismissal, (3) obtain a declaratory judgment that any settlement in this case between the Town and the Railroad Defendants cannot include the release,

waiver or transfer of any part of the Town's c. 61 property interests without Town Meeting authorization, and (4) obtain a declaratory judgment that the Town's ultimate purchase price of the Forestland must be reduced due to the Railroad Defendants' unlawful land clearing of the Forestland that it commenced during the pendency of the Hopedale Citizens' action and while subject to the Appeals Court injunction.

### **FACTUAL AND PROCEDURAL BACKGROUND<sup>3</sup>**

#### **1. The Town's Exercise of its c. 61 Option and Subsequent Settlement Agreement**

On July 9, 2020, the Railroad entered into a Purchase and Sale Agreement with the Trust-owner of 130 acres of land in the Town of Hopedale classified as Forestland under c. 61 and provided the Town with a Notice of Intent, as required under c. 61, to sell the property for \$1,175,000.<sup>4</sup> VIC ¶ 22. This created an irrevocable first refusal option to the Town to purchase the Forestland for \$1,175,000, pursuant to c. 61, § 8 ("Option"). The Town took all necessary steps to exercise the Option within the statutory 120 days. The Town informed the Property owner and the Railroad that it was considering exercise of its Option and on October 24, 2020, a Special Town Meeting was attended in person by over 400 citizens of Hopedale to appropriate funds to exercise the Option. Article 3 of the Town Meeting Warrant presented the following question:

To see if the Town will vote to acquire, by purchase or eminent domain, certain property, **containing 130.18 acres**, more or less . . . 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

<sup>3</sup> Hopedale Citizens rely on their Verified Intervenor Complaint and cite thereto as ("VIC, ¶ \_\_").

<sup>4</sup> An additional 25 acres of the property are wetlands that run through a portion of the Forestland (the "Wetlands") and are excluded from c. 61 classification, together the "Property". VIC ¶ 12.

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 . . .

VIC ¶ 41 (emphasis added).

Residents of the Town spoke overwhelmingly in favor of acquiring the 130.18 acres of Forestland for use by the public for conservation and recreation. The Finance Committee recommended approval of Article 3 and informed the Town Meeting of a gift offer of \$750,000 from the Hopedale Foundation to assist in the exercise of the Option. Chairs of the Conservation Commission and Water and Sewer Commissions spoke in favor of exercising the Option. VIC ¶ 42.

However, the Motion on Article 3 was not to authorize acquisition of the Forestland by eminent domain or purchase. Rather, the Motion was only “to appropriate . . . \$1,175,000, less amounts received by gift, to pay costs of acquiring certain property, containing 130.18-acres”. VIC ¶ 43, Ex. 12. The Motion only to appropriate funds was made by the Board Chairman advisedly because the decision to exercise the c. 61 Option resides with the Board, while the appropriation of funds resides with the Town Meeting. The Motion passed unanimously. Id.

By contrast, Town Meeting also voted on a motion on Article 5, which was to see if the Town would “take by eminent domain pursuant to Chapter 79” the 25-acre Wetlands on the Property and to appropriate the funds for the acquisition. A Board member “moved to purchase, or take by eminent domain pursuant to Chapter 79” the 25 acres “and in order to fund said acquisition, borrow pursuant to G.L. c. 44, § 7 . . . the sum of \$25,000”. That motion also passed unanimously. VIC ¶ 44, Ex. 12.

Through these two votes, Town Meeting (1) appropriated funds for the Board to exercise the Option on the 130-acre Forestland; and (2) authorized the taking and appropriated funds to

take the 25-acre Wetlands. The Town Meeting did not authorize the Board to acquire the Forestland outside of the exercise of the Option, which the Board independently held authority to do under c. 61.

On October 30, 2020, the Board voted to exercise the Town's Option to acquire the 130-acre Forestland, consistent with the Town Meeting vote. VIC ¶ 46. On November 2, 2020, the Town recorded notice of the exercise of its Option and the taking of the Wetlands in the Worcester South District Registry of Deeds. VIC ¶ 48, Ex. 14.

Meanwhile, the Railroad Defendants took a series of illegal maneuvers to seize control of the Forestland and strip the Town of its c. 61 Option, and began clearing the Forestland. VIC ¶¶ 30-34. On October 28, 2020, the Town sued the Railroad in Land Court in this action to seek a judicial order that the Town retained its Option despite the Railroad's shifty actions and to enjoin further land clearing. *Id.* ¶ 47. On November 23, 2020, the Land Court denied the Town's request for a preliminary injunction in a brief, narrow order 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 and that given the Railroad's representation that no further land clearing would occur, there was no risk of harm. *Id.* ¶ 54.<sup>5</sup>

Thereafter, the Board and the Railroad engaged in mediation and entered into a Settlement Agreement that is irreconcilable with Town Meeting authority and purpose and would expend funds that were not authorized by Town Meeting. The Board agreed to purchase 40 acres of the Forestland for \$587,500. The Town Meeting, however, appropriated funds for the

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<sup>5</sup> The Superior Court has since ruled that the Town retains its full rights under c. 61 and that it may now seek to enforce those rights. *See* Orders dated November 4, 2021 (attached hereto as Exhibit 1) and December 14, 2021 (attached hereto as Exhibit 2) (Goodwin, J.).

exercise of the Town's c. 61 Option to acquire the full 130.18-acre Forestland but did not authorize any land acquisition or expenditure outside the exercise of that Option.

**2. The Hopedale Citizens' Superior Court Action and Entry of Judgment as to Count I, Enjoining and Invalidating the Settlement Agreement**

On March 3, 2021, the Hopedale Citizens filed their action in Superior Court to enjoin the execution of the Settlement Agreement and require the Town to enforce its full c. 61 option because the key provision of the Settlement Agreement lacked authorization – namely, the Board of Selectmen only had authority from Town Meeting to exercise the Option for the entire 130 acres of Forestland and did not have the authority to acquire any lesser portion of the Forestland. The Hopedale Citizens brought these claims against the Town of Hopedale, the Board of Selectmen and the Railroad Defendants. The Hopedale Citizens' Complaint included a claim against the Railroad Defendants and the Town to enforce the c. 61 rights because the Railroad Defendants had violated c. 61 in transferring property interests of the Forestland.<sup>6</sup>

On March 25, 2021, the Single Justice of the Appeals Court (Meade, J.) enjoined the Town from paying any funds or transferring any property interests under the Settlement Agreement, reversing the Superior Court's (Frison, J.) initial denial of that request. While the Appeals Court order remained in force, the Railroad Defendants again began clearing the Forestland. On September 9, 2021, the Superior Court (Goodwin, J.) entered a Temporary Restraining Order against the Railroad Defendants and on September 24, 2021 entered a Preliminary Injunction against the Railroad Defendants from any further land clearing.

On November 4, 2021, the Superior Court (Goodwin, J.) issued its decision on the parties' cross-motions for judgment on the pleadings, entering judgment for the Citizen Plaintiffs

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<sup>6</sup> The Superior Court agreed that the Railroad Defendants attempted to circumvent the Chapter 61, § 8 process (Ex. 1 at 11) but held that the Hopedale Citizens lacked standing to force the Board to enforce the Town's c. 61 rights against the Railroad Defendants' violations.

on Count I, permanently enjoining the execution of the Settlement Agreement without Town Meeting authorization and entering judgment against the Citizen Plaintiffs on Counts II and III for lack of standing. Judge Goodwin also extended the injunction against the Railroad Defendants for sixty (60) days to give the Town time to decide whether to seek Town Meeting authorization of the Settlement Agreement or seek to enforce the Town's full c. 61 rights. Ex. 1.

Judge Goodwin's order as to Count I is critical to this Land Court action. Judge Goodwin made findings of fact and law that are now law of the case and must be respected, including, that "it is undisputed that the Town attempted to carry out the steps necessary to exercise its Option" ( Ex. 1 at 5); that the "Railroad Defendants' attempt[ed] to circumvent Chapter 61, § 8, process by purporting to acquire only the 'beneficial interest' in the forest land while undertaking commercial operations . . . [and] court cannot ignore Railroad Defendants' initiation of land clearing operations after the Town issued a notice of intent" (*id.* at 11); and that the Town could either "seek the Town Meeting authorization necessary to validate the Settlement Agreement or [] take the necessary steps to proceed with its initial decision to exercise the Option to the entire Property" (*id.* at 12). The Town was uncertain about the ruling and whether Judge Goodwin had ruled that the Town did, in fact, retain its c. 61 rights. The Court granted the Town's assented to request to extend the injunction to January 31, 2022 while the Town filed a Motion for Clarification.

On December 14, 2021, Judge Goodwin issued an Order of Clarification for the Town, holding that the Settlement Agreement "provided that in exchange for the Railroad voluntarily selling a portion of the forest lands to the Town, the Town would cease efforts to enforce G.L. c. 61, s. 8 Option" and that, accordingly, "the Settlement Agreement would fail to take effect" if the Board does not obtain authorization at Town Meeting and the Town would retain "the right to

continue attempting to enforce the Option”. Ex. 2. at 1-2. To remove any doubt as to the Court’s order it stated point blank: “the Board exceeded its authority when it unilaterally entered into that agreement without Town Meeting approval of the reduced acquisition. Therefore, the Settlement Agreement is not effective.” Id. at 2 (emphasis added). And in note 3, the Court wrote especially that the Railroad cannot get all of the benefits of the agreement and give nothing up in exchange, a result that “would be unjust, to say the least.” Id. at n. 3. Going further than before, the Court ruled that the Town, if it did not or could not, obtain Town Meeting authorization for the Settlement Agreement, that “the Town could seek rescission of the Settlement Agreement”. Id.

The Town, thereafter, on December 30, 2021, filed in this Court, its Motion to Vacate the Stipulation of Dismissal. The Town also sought an extension of the injunction in its Motion to Vacate.

### ARGUMENT

The Hopedale Citizens seek to intervene in this case pursuant to Mass. R. Civ. P. 24(a)(2) because the Hopedale Citizens claim a public interest to the property which is the subject of the action and are so situated that the disposition of the action may impair or impede their ability to protect that interest and pursuant to Rule 24(b)(2), which applies because the Hopedale Citizens’ “claim or defense in the main action have a question of law or fact in common” with the Town’s claims. The Court has “broad discretion” when deciding to permit intervention. Cruz Mgmt. Co. v. Thomas, 417 Mass. 782, 785 (1994). In exercising such discretion, the Court shall consider “whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.” Mass. R. Civ. P. 24(b)(2). See, e.g., Town of Wakefield v. Att’y Gen., 334 Mass. 632 (1956) (allowing twenty-one taxpayers to intervene where nature of Town’s title



in property was in dispute); Valley Green Grow, Inc. v. Town of Charlton, 18-misc-000483, (Mass. Land. Ct. Nov. 8, 2018) (Foster, J.); aff'd, 99 Mass. App. Ct. 670 (2021) (allowing signer of ballot initiative to intervene because there was “some question as to whether the Town will take an active role in defending the Initiative” and they may otherwise be unable to protect their interests); Samuelson v. Town of Orleans Planning Bd., 10-misc-433554 (Mass. Land. Ct. Sept. 23, 2010) (Trombly, J.); aff'd, 86 Mass. App. Ct. 901 (2014) (allowing beneficial owners of property to intervene as defendants on Planning Board appeal because “they would be the most diligent and zealous defenders of the action, possibly even more so than that Board”); Decoulos v. City of Peabody, 00-misc-261929 (Mass. Land. Ct. Nov. 9, 2000) (Lombardi, J.); aff'd 2004 WL 1656488 (Mass. App. Ct. July 23, 2004) (allowing landowner to intervene because “the City cannot adequately represent the interests of [the landowner]”).

**1. The Hopedale Citizens’ successes in the Superior Court Action necessitate their presence in this action.**

A status hearing on the Town’s Motion to Vacate was held in this Court on January 11, 2022. Counsel for the Hopedale Citizens appeared at that hearing and the Court invited counsel for the Hopedale Citizens to participate. Counsel further indicated that it was considering intervening in this case to protect the Hopedale Citizens’ gains.

It is beyond dispute that the parties have returned to this court solely because of the fruit of the Hopedale Citizens’ labors to protect the public’s interest in the Forestland. Both the Town’s Motion to Vacate and the Railroad Defendants’ Opposition to that Motion make repeated references to the Hopedale Citizens’ action and the effect that judgment on Count I has on the respective parties’ rights. The Railroad Defendants’ alone mention the “Citizen Suit”, the “10-taxpayers” or the Superior Court’s ruling on Count I **at least thirty-seven (37) times** in their short Opposition to the Town’s Motion to Vacate.

Not only is the Hopedale Citizens' Judgment the catalyst to reopen this litigation, but the public now knows, for the first time, that the ill-fated Settlement Agreement was amended in direct response to the Hopedale Citizens' Notice to the Board and the Railroad Defendants that the Settlement Agreement would be invalid, *inter alia*, because the lack of authorization from Town Meeting for the Town to purchase the inferior portion of the Forestland.

The President of the Railroad, Michael Milanoski, admits to the Railroad Defendants' nefarious motivations and tactics. On February 7, 2021, the Hopedale Citizens sent notice of the negotiated Term Sheet's deficiencies, including that the "[Board] did not have the authority to enter into a contract for an inferior fraction of the [Forestland] for the price set forth in the Term Sheet, or the outlying property . . . These terms are inconsistent with and contradictory to the Town Meeting vote and are therefore invalid." Keavany Aff. Ex. 4 at 5. Milanoski admits that the parties reduced the final agreement to writing the next day, on February 8, 2021. Milanoski Aff. ¶ 7. Milanoski lays it bare, explaining that "the [Railroad] defendants insisted on the inclusion of a severability clause in the Settlement Agreement because it was clear that some town residents and public officials were not in favor of the Town settling with the [Railroad] defendants and that someone may attempt to challenge the Settlement Agreement . . . The severability clause was added at the end of negotiations, one or two days before the Settlement Agreement was executed." *Id.* ¶ 9 (emphasis added).<sup>7</sup> The Railroad Defendants knew the key provision was unauthorized but rather than add a clause that the property's acquisition would be subject to approval by a majority vote at Town Meeting, as they did for another non-Forestland

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<sup>7</sup> It is worth noting that the inclusion of the severability provision appears to have been inserted after Judge Lombardi's involvement had ended and there is no indication that he was aware or approved of it.

parcel<sup>8</sup>, the Railroad Defendants “insisted” on a severability clause directly intended to impede the Hopedale Citizens’ from enforcing the public’s rights against unauthorized expenditures and the preservation of the Forestland.<sup>9</sup>

Accordingly, because the Railroad Defendants clearly intend to relitigate the Hopedale Citizens Suit and because this case will include close examination of the Railroad Defendants’ illegal maneuvering as it relates to the invalid Settlement Agreement – including that it was intended to carve out the public’s enforcement of its rights – the Hopedale Citizens’ must have a voice in the Court. What the Railroad Defendants attempted to do was prep the field for the outcome it now nakedly advances, the very outcome that the Superior Court has already chided as “unjust, to say the least”. The Hopedale Citizens must be allowed to participate.

**2. The Hopedale Citizens’ request for intervention is timely.**

The Superior Court issued its Order on the Town’s Motion for Clarification on December 14, 2021 and the Town of Hopedale filed its Motion to Vacate the Stipulation of Dismissal in this Court on December 30, 2021, less than one month ago. Following the Town’s filing of its Motion, the Railroad Defendants refused to agree to extend the injunction against its Forestland destruction pending action by this Court on the Motion to Vacate. The Town then filed, on January 11, 2022, its Emergency Motion to Extend the Injunction in the Superior Court and the Hopedale Citizens joined that motion on January 13, 2022. The Railroad Defendants opposed

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<sup>8</sup> The parties did, in fact, add a clause to the Settlement Agreement that acceptance of the donated, outlying parcel is “subject to approval by a majority vote at Town Meeting”. See Milanoski Aff. Ex. 2, Settlement Agreement § 1(d)(i) (“Subject to approval by a majority vote at Town Meeting pursuant to G.L. c. 40, § 14...”). The intentional decision to not add this to the acquisition of the smaller portion of the Forestland is all the more glaring.

<sup>9</sup> Even if the severability provision were legitimate and not designed to inoculate an unlawful provision, the entire Settlement Agreement is a nullity because the material terms, the Town’s payment of \$587,500 and acquisition of 40 acres of Forestland, are unlawful and the Agreement is void for lack or failure of consideration. Abrams v. Board of Sudbury, 76 Mass. App. Ct. 1128 (2010); Carrig v. Gilbert-Yarker Corp., 314 Mass. 351, 357 (1943). As held by the Superior Court, “the Settlement Agreement is not effective” and enforcement of the severability clause “would be unjust, to say the least.” Ex. 2 at 2, n.3.

the motion and claimed that the Superior Court has no jurisdiction over them, believing that they are immune from the powers of the Courts. See Reilly, et al. v. Town of Hopedale, et al., Railroad Defendants' Opposition to Town's Emergency Motion to Extend Injunction (Dkt. No. 53). This Motion to Intervene is timely given the speed of recent events, that the hearing on the Motion to Vacate is scheduled for January 24, 2022 and the Superior Court's injunction against the Railroad's land clearing activities expires January 31, 2022.

**3. The Hopedale Citizens have standing to seek protection of the injunction they obtained in Superior Court.**

The Hopedale Citizens have standing to continue to protect the public's interest in the Forestland and Town expenditures through seeking to vacate the stipulation of dismissal and rescission of the Settlement Agreement and through the extension of the injunction against clearing of the Forestland pending disposition of the public's rights therein via G.L. c. 40, § 53 and mandamus.<sup>10</sup> See Nickolas v. City of Marlborough, 32 Mass. L. Rptr. 125, at \*2-3 (Mass. Super. Ct. May 9, 2014) (residents have standing to seek relief in the nature of mandamus that the city must comply with alleged legal duties concerning public park before constructing a proposed senior center); Harris v. Town of Wayland, 392 Mass. 237 (1984) (residents sought mandamus and declaratory relief regarding sale of town land for purpose of constructing elderly and low-income housing; court held that purported authorization by majority vote of the town for

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<sup>10</sup> The Hopedale Citizens recognize that under c. 40, § 53, ten taxpayers lawsuits must be brought in the Superior Court. However, the Hopedale Citizens are following the lead of, and joining, the Town of Hopedale, which filed its Motion to Vacate the Stipulation of Dismissal in this Court. At any rate, this jurisdictional issue can easily be cured by one of two ways, either: (1) transfer of this action to the Superior Court for consolidation with the Hopedale Citizens' Action, a request that has already been made by the Hopedale Citizens, or (2) this Court could seek an interdepartmental assignment with retroactive effect to hear the Hopedale Citizens' claims under c. 40, § 53. See, e.g., Ritter v. Bergmann, 72 Mass. App. Ct. 296, 301, n. 9 (2008) (holding that even if the Land Court was without jurisdiction, it would not be fatal to the judgment, "the Chief Justice for Administration and Management could cure any such defect, *nunc pro tunc*" because "The overriding principle applicable here is that the courts of the Commonwealth constitute a single system for the administration of justice in conformity to law, promptly, and without delay.").

sale was invalid). See also Reilly v. Town of Hopedale, et al. No. 2185-cv-00238 (Mass. App. Ct. Mar. 25, 2021) (Meade, J.) (attached hereto as Exhibit 3); Order on Motion for Judgment on the Pleadings (Goodwin, J.), Ex. 1; Order on Motion for Clarification (Goodwin, J.), Ex. 2; Hopedale Citizens' Memorandum in Opposition to Railroad Defendants' Motion for Judgment on the Pleadings on Standing (Dkt. No. 29.3), at pp. 8-10.

The Railroad Defendants reluctantly now “agree to abide” by the injunction against destroying the Forestland until February 14, 2022. This is just more manipulation of the Court from the Railroad Defendants. Rather than respect the judicial process and agree to maintain the status quo until resolution, the Railroad Defendants place a unilateral, arbitrary deadline on the Court to act. To guard against such manipulation, the Hopedale Citizens must be permitted to request that the Court enjoin the Railroad Defendants' thirst to destroy the Forestland before the parties' rights thereto can be finally resolved.

The Hopedale Citizens likewise have standing under c. 40, § 53 to (1) seek protection against any subsequent settlement efforts that would release, waive or transfer any of the Town's c. 61 property interests without Town Meeting authorization<sup>11</sup> and (2) obtain an order that the final purchase price of the c. 61 Forestland must be reduced due to the damage already caused by the Railroad Defendants when they cleared a significant swath of the Forestland to construct an access road and construction staging ground. Town of Brimfield v. Caron, 2010 WL 94280, \*10-11 (Mass. Land Ct. Jan. 12, 2010), *after trial*, 2015 WL 5008125 \*4-8 (Mass. Land Ct. Aug. 21, 2015) (ordering that Town has right to purchase forestland at a price adjusted for value of minerals removed from forestland by putative buyer prior to issuance of preliminary injunction); Oliver v. Town of Mattapoisett, 17 Mass. App. Ct. 286, 287-88 (1983) (affirming standing under

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<sup>11</sup> The Hopedale Citizens raised this issue in the Superior Court action but the Court did not reach it.

c. 40, § 53 for ten taxpayers to challenge a town meeting vote to grant an easement in Town land to a private party).

To protect the public's vital interest in the Town's c. 61 Forestland and ensure that any Town funds expended are authorized, the Hopedale Citizens are critical parties in this matter. For this reason and because the Town may not adequately protect the public's rights in the Forestland and it is not yet clear whether, or to what extent, the Town will reduce the purchase price to take into account the Railroad Defendants' illegal destruction of a portion of the Forestland, the Hopedale Citizens should be permitted to intervene under Rule 24(a)(2) and 24(b)(2). It is clear that no party other than the Hopedale Citizens is certain to fully protect the Forestland, the Town's property rights and safeguard the Town's coffers.

A copy of the Hopedale Citizens' proposed Intervenor's Complaint is provided herewith, in accordance with Mass. R. Civ. P. 24(c).

WHEREFORE, the Hopedale Citizens respectfully requests allowance of this motion and leave to file the enclosed Intervenor's Complaint.

INTERVENOR-PLAINTIFFS,

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,

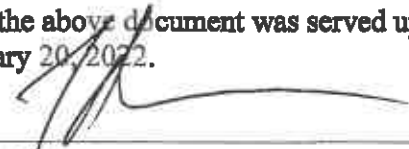


David E. Lurie, BBO# 542030  
Harley C. Racer, BBO# 688425  
Lurie Friedman LLP  
One McKinley Square  
Boston, MA 02109  
Tel: 617-367-1970  
Fax: 617-367-1971  
dlurie@luriefriedman.com  
hracer@luriefriedman.com

Dated: January 20, 2022

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the above document was served upon the attorney of record for each other party by email on January 20, 2022.

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Harley C. Racer