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,))))))))
TOWN OF HOPEDALE, THE HOPEDALE 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.)) Civil Action No. 4:22-cv-40080-ADB))))))))))

DEFENDANTS TOWN OF HOPEDALE ET AL.'S MOTION FOR LEAVE TO FILE SUPPLEMENTAL MEMORANDUM IN FURTHER OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

The defendants, the Town of Hopedale *et al.* ("the Town"), submit this motion for leave to file the Supplemental Memorandum in Further Opposition to Plaintiffs' Motion for Preliminary Injunction, attached as Exhibit A ("Supplemental Memorandum"). The Supplemental Memorandum, and the Verified Complaint ("Complaint") attached thereto, reflect that Michael Milanoski ("Milanoski"), the plaintiff in this action and the President of the Grafton & Upton Railroad Company ("GURR"), has sued John Delli Priscoli ("Delli Priscoli"), also a plaintiff in this case and the owner both of GURR and the majority stake in the Forestland at issue in this action. Milanoski's Complaint alleges that Delli Priscoli is suffering from serious financial difficulties, that his businesses are facing possible foreclosure, and that as a result Delli

Priscoli is actively attempting to sell GURR and his 66% interest in the Forestland to an unnamed third party.

The Complaint (sworn to by Milanoski) thus reflects serious concerns regarding whether Delli Priscoli has the financial resources to develop the massive, twenty-plus building railroad transloading facility reflected in GURR's pleadings in this case. But even more importantly, it appears that GURR and a majority interest in the Forestland may soon be owned by an unidentified third-party who may, or may not, choose to pursue GURR's development plans in whole, in part, or not at all. Given these additional uncertainties, along with the technical flaws with the development plans already identified in the Town's pleadings in opposition to GURR's motion for a preliminary injunction, GURR cannot meet its burden of showing that it is "likely that [its] plans will come to fruition." *Girard* v. *Youngstown Belt Ry. Co.*, 134 Ohio St. 3d 79, 91 (2012). That likelihood is a requirement for the claim that the Town's proposed taking is preempted by federal law, *id.* at 91-92, and the basis for GURR's claim that it is likely to succeed on the merits in this case.

Wherefore, the Town requests that this Court accept for filing the Supplemental Memorandum and the attached Verified Complaint.

TOWN OF HOPEDALE, THE HOPEDALE 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,

By their attorneys,

/s/ David S. Mackey

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Dated: January 31, 2023

CERTIFICATE PURSUANT TO LOCAL RULE 7.1(A)(1)

I hereby certify that I conferred with counsel for the plaintiffs on January 31, 2023, in attempt to narrow the issues subject to this motion. Counsel represented that he would not object to the filing of the Supplemental Memorandum if the Court provided him with the opportunity to respond.

/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 31st day of January, 2023.

/s/ David S. Mackey
David S. Mackey