

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss.

SUPERIOR COURT
CIVIL ACTION NO. 21CV00238

ELIZABETH REILLY and others,¹

Plaintiff,

v.

TOWN OF HOPEDALE and others,²

Defendants.

MEMORANDUM AND ORDER ON MOTION FOR PRELIMINARY INJUNCTION

Before the court is the plaintiffs' motion to "preserve the status quo" and prevent the defendants, Grafton & Upton Railway ("Railway") and related persons and entities, from removing trees and otherwise interfering with property designated as protected forestland. Consider the motion as one for injunctive relief, the court **ALLOWS** the motion.

BACKGROUND³

The court briefly summarizes the factual and procedural background of this case. Approximately 30 years ago, the assessor of the Town of Hopedale ("Hopedale" or the "Town") approved the application of the owner of 130.18 acres of woodlands to designate the property as forestland (the "Forestland") under G. L. c. 61, §2 ("Chapter 61"). In return for preferential tax treatment under Chapter 61, the Forestland could not be sold for residential, industrial, or

¹ Carol J. Hall, Donald D. Hall, Hilary Smith, David Smith, Megan Fleming, Stephanie A. McCallum, Jason A. Beard, Shannon W. Fleming, and Janice Doyle.

² Louis J. Arcudi, III, Brian Keyes, Grafton & Upton Railroad Company, Jon Delli Priscoli, Michael Milanoski, and One Hundred Realty Trust.

³ The facts are drawn from the verified complaint and exhibits as well as affidavits submitted in connection with the motion to preserve the status quo.

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commercial purposes unless the Town received notice of the proposed sale and an opportunity to exercise its right of first refusal. G. L. c. 61, §8.

On July 9, 2020, Charles Morneau, as Trustee for One Hundred-Forty Realty Trust (the "Trust"), the owner of the Forestland, notified Hopedale of the Trust's intent to sell to the Railway 155.24 acres of land, which included the Forestland as well as 25.06 acres of wetlands (the "Wetlands"). On August 19, 2020, Hopedale asked the Trust to clarify its notice to specify the terms applicable specifically to the Forestland.

The Trust's response reflected a blurring of the lines between the Trust and the Railway. On October 7, 2021, that the law firm that now represents the Railway, notified the town on behalf of its client (which the firm did not identify) that rather it was withdrawing its Chapter 61 notice. Hopedale responded the following day,⁴ stating that the Trust's purported withdrawal was of no effect, and that Hopedale would proceed to consider whether to exercise its right of first refusal. On October 15, 2020, the Railway notified the town that it had purchased "all of the beneficial interest" of the Trust in the Forestland. Around the same time, Railway officials replaced Morneau as Trustees of the Trust.

On October 21, 2020, Hopedale notified the Railway and the Trust that it was moving forward with its option to buy the Forestland. On October 24, 202, residents at the Hopedale town meeting voted to appropriate money \$1,175,000 to acquire the Forestland under Chapter 61 and to fund the taking of the Wetlands by eminent domain. Six days later, the Board of Selectmen voted to buy the Forestland and take the Wetlands by eminent domain. On November 2, 2020, Hopedale recorded in the Worcester South District Registry of Deeds notice of its decision to exercise its right of First Refusal in the Forestland and eminent domain rights over the Wetlands.

⁴ Hopedale's response was addressed to the Trust.

In the meantime, the Railway had begun to clear the Forestland. Hopedale filed a lawsuit in the Land Court seeking to stop the clearing and effectuate its acquisition of the Forestland and Wetlands. The Land Court litigation resulted in a Settlement Agreement executed on February 9, 2021, under which Hopedale would buy approximately 40 acres of the Forestland for \$587,500. The plaintiffs filed the instant lawsuit on March 3, 2021, along with a motion for a preliminary injunction seeking to enjoin the Town from buying a portion of the Forestland.

On March 11, 2021, the court (Frison, J.) denied the motion for a preliminary injunction. The plaintiffs appealed and a single justice of the Appeals Court on April 8, 2021, enjoined Hopedale from making any expenditure, issuing any bonds, or transferring any property pursuant to the Settlement Agreement.

Thereafter, the parties filed cross motions for judgment on the pleadings which were heard by the court on September 9, 2021. On the day of the hearing, the plaintiffs filed an "Emergency Motion to Preserve the Status Quo." The motion and supporting affidavits stated that the Railway had resumed cutting trees on the Forestland. Following a September 9, 2021, hearing on the motions for judgment on the pleading and the motion for injunctive relief, the court entered a Temporary Restraining Order preventing any further alteration or destruction of the Forestland pending further order of the court. The court also invited the parties to supplement their filings relating to the requested injunction, which the parties did on September 13, 2021.

DISCUSSION

A court addressing a request for injunctive relief must balance the risk of irreparable harm to the parties in light of each party's likelihood of success on the merits. See *Planned Parenthood League of Massachusetts, Inc. v. Operation Rescue*, 406 Mass. 701, 710 (1990). See also *Packaging Industries Group, Inc. v. Cheney*, 380 Mass. 606, 616–17 (1980). "Since the

goal is to minimize the risk of irreparable harm, if the moving party can demonstrate both that the requested relief is necessary to prevent irreparable harm to it and that granting the injunction poses no substantial risk of such harm to the opposing party, a substantial possibility of success on the merits warrants issuing the injunction.” *Packaging Industries*, 380 Mass. at 617, n.12. In addition, given the nature of this case, the court must also consider “the risk of harm to the public interest.” *Brookline v. Goldstein*, 388 Mass. 443, 447, 447 N.E.2d 641 (1983).

Before the court turns to applying that standard here, it will address the impact of the appeals court injunction on the current request to “preserve the status quo.” The Railway argues that the injunction entered by the appeals court does not restrain its actions on the Forestland because the order only prevents the town from spending money to acquire a just portion of the Forestland. In the court’s view, the Railway reads the injunction too narrowly. The purpose of the injunction was to temporarily prevent the town from releasing the Chapter 61 limitations on a large portion of the Section 61 Forestland owned by the Trust. By clearing the Forestland, the Railway, in essence, is treating the Forestland as though it were released from Chapter 61 constraints, a result the appeals court injunction sought to prevent.

To the extent the appeals court order is not broad enough to constrain the Railway’s actions, this court believes it appropriate to extend its reach to the Trust and the Railway.⁵ If the plaintiffs are successful in this lawsuit, the Forestland would remain in its natural state. The Railway’s continued clearing of the Forestland would make that result impossible.

Finally, the court’s own analysis of the appropriateness of injunctive relief leads it to the same conclusion. The court agrees with the Appeals Court that the plaintiffs have at least a reasonable likelihood of success on the merits and adopts its analysis here. See *Reilly v. Hopedale*, Appeals Court No. 2021-J00111 (April 8, 2021). That the plaintiffs would suffer

⁵ Although the Trust still appears to be the record owner, the Railway is treating the property as its own.


irreparable harm requires little discussion. Once trees are removed, they are gone for the foreseeable future. The Railway's claimed – delays in maintaining a construction schedule – pales in comparison. The question of harm to the public interest depends to a large degree on which side of the litigation is correct. In any event, the court see no obvious risk of harm to the public interest occasioned by issuing the preliminary injunction.

ORDER

For the above reasons, it is **ORDERED THAT:**

1. The plaintiff's Motion for a Preliminary Injunction is **ALLOWED**.
2. Grafton & Upton Railroad Company, Jon Delli Priscoli, Michael Milanoski, and One Hundred Realty Trust are **TEMPORARILY ENJOINED** from any further alteration or destruction of the 130.18 acres of Forestland that is the subject of this lawsuit pending further order of the court.

Dated: September 24, 2021



Karen Goodwin
Associate Justice, Superior Court

