

REILLY, ET ALS. V. TOWN OF HOPEDALE – STATUS

In early 2021, the Board of Selectmen resolved litigation in the Land Court against the One Hundred Forty Realty Trust and Grafton and Upton Railroad Company (“the Railroad Defendants”). The Board brought this action to confirm its “right of first refusal” rights to 130 acres off West Street held by the Railroad Defendants; in October 2020, a Special Town Meeting authorized the acquisition of this property and appropriated the funding to do so, as well as authorizing the taking by eminent domain of an adjacent 25 acre parcel (and funding to do so). During the Land Court proceedings, the Board determined that the Town’s chances of prevailing in that case were not strong, due to federal law preemptions in favor of the Railroad Defendants; the Land Court judge also urged the parties to settle the case through mediation rather than trial. In addition, the Railroad Defendants filed an action before the federal Surface Transportation Board, in which the Town’s chances of success would be even less and it would be forced to litigate this property twice. The mediation resulted in a Settlement Agreement in which the Town would purchase 64 acres that are critical to the Town’s future needs for public water supply and watershed preservation. The Railroad Defendants also agreed to donate a separate 20-acre parcel off West Street that will serve the same purposes.

The current litigation in Worcester Superior Court is a so-called “ten taxpayer suit,” claiming that the October Special Town Meeting votes does not authorize the Board of Selectmen to acquire the property described in the Settlement Agreement or to use the appropriation vote to fund the acquisition, and a new vote is required. The Plaintiffs also claim that the Board of Selectmen must acquire all 155 acres, or even that the Town has already acquired it. It is Town Counsel’s position, however, that:

1. The Town’s right of first refusal on the 130 acres was waived and finally resolved in the Land Court litigation, and **there are no legal means** for the Town to compel the Railroad Defendants to turn over the 130 acres. The Settlement Agreement is a binding agreement.
2. The **only two options** available to the Town at this point are (A) complete the Settlement Agreement terms and acquire 85 acres from the Railroad Defendants, including the 20 acres by donation; or (B) acquire **none** of the West Street property.

We anticipate that the Superior Court litigation will result in a judgment on the claim involving the validity of October 2020 Special Town Meeting votes. If the Court rules in favor of the Town and Railroad Defendants, the STM votes will allow the Board of Selectmen to acquire the property. If the Court rules in favor of the Plaintiffs, it will require a new Town Meeting vote to authorize the acquisition of the property as described in the Settlement Agreement. Town Counsel anticipates that the legal issues will be before the Superior Court over the summer, with a judgment hopefully by the fall.