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**COMMONWEALTH OF MASSACHUSETTS
SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT**

Essex, ss.

Civil Action No. 2577CV00379 D

_____)
MORE THAN TEN CITIZENS of the)
COMMONWEALTH OF MASSACHUSETTS:)
ROSEMARY HALLORAN, KATHLEEN GRANT,)
ELIZABETH WALTHER-GRANT, ALAN S. HARRIS,))
SANDRA GALLEY, STEVEN WALTHER, SARA)
SCHMITT, STEVEN SCHMITT, SHILPI RANJAN,)
RAGHAV RANJAN, MICHAEL SILVERMAN,)
LENNIE SILVERMAN, AND LINDSAY CONCEMI)

Plaintiffs,)

v.)

TOWN OF ANDOVER, TOWN OF ANDOVER)
SELECT BOARD, LAURA M. GREGORY,)
ALEXANDER J. VISPOLI, ELLEN TOWNSON,)
KEVIN COFFEY and MELISSA DANISCH, as they)
are MEMBERS OF THE TOWN OF ANDOVER)
SELECT BOARD, ANDREW P. FLANAGAN as he is)
the TOWN MANAGER OF THE)
TOWN OF ANDOVER)

Defendants.)

VERIFIED COMPLAINT

INTRODUCTION

1. This is an action under M.G.L. c. 214, § 7A for immediate injunctive relief as well as permanent injunctive relief to prevent irreparable harm to the environment – the Town of Andover’s (the “Town”) proposal to change the use of public land acquired and held for the protection of public water supply, to construct approximately 1.18 miles of impervious asphalt trail on a previously unimproved former railroad bed, a “boardwalk spur” through wetlands, the paving and expansion of an existing pervious parking area, and the creation of additional

impervious parking (the “Project”), without obtaining legislative approval as required by Article 97 of the Amendments to the Massachusetts Constitution (“Article 97”) or complying with M.G.L. c. 3, § 5A (An Act Preserving Open Space in the Commonwealth, referred to herein as the “Act”), the Massachusetts Executive Office of Environmental and Energy Affairs’ (“EEA”) Land Disposition Policy, and the Massachusetts Environmental Policy Act (“MEPA”).

2. The three parcels in question (Andover Assessor’s Map 195, Lots 1 and 2 and Map 196, Lot 14) have street addresses of 0, 51R, and 52 Haggetts Pond Road in Andover (collectively, the “Property”). The Property is adjacent to Haggetts Pond, the source of the Town’s public water supply. The Property was acquired and/or subsequently designated by the Town for protection of public water supply.

3. Thirteen citizens of the Commonwealth, all of whom reside in Andover and are registered voters in that town, seek a temporary restraining order and preliminary injunction to prevent the Project, as well as cutting of trees, excavation and other site preparation work at the Property, until this lawsuit is decided and/or until there is a disposition of the Article 97 property in full compliance with Article 97 procedures, including compliance with the Act, the EEA Land Disposition Policy, and MEPA.

4. The Property is a valuable natural resource protected by Article 97. It is imperative that this natural resource be preserved from development which would significantly degrade or destroy its value in protecting public water supply until the Article 97 issues are resolved.

5. This is also an action pursuant to M.G.L. c. 231A, for declaratory judgment that the Property is protected under Article 97 as public land in held for the protection of the public water supply, and the necessary legislative approval is required prior to any transfer, change in use or other disposition of the Property.

JURISDICTION

6. This Court has jurisdiction and venue over this matter pursuant to G.L. c. 214, § 7A. Under the statute, the named thirteen Massachusetts-domiciled individuals have notified the above-named Defendants, the Secretary of the EEA, the Attorney General's Office, and Town of Andover officials of the environmental damage and natural resource impairment alleged herein by certified mail on February 24, 2025. A copy of that letter is attached hereto as Exhibit A.

7. Jurisdiction is also conferred upon this Court by M.G.L. c. 231A.

PARTIES

8. Plaintiff Rosemary Halloran is a citizen of the Commonwealth of Massachusetts, with a principal residence and domicile at 197 Haggetts Pond Road, Andover, Essex County, Massachusetts.

9. Plaintiff Kathleen Grant is a citizen of the Commonwealth of Massachusetts, with a principal residence and domicile at 83 Morton Street, Andover, Essex County, Massachusetts.

10. Plaintiff Elizabeth Walther-Grant is a citizen of the Commonwealth of Massachusetts, with a principal residence and domicile at 83 Morton Street, Andover, Essex County, Massachusetts.

11. Plaintiff Alan S. Harris is a citizen of the Commonwealth of Massachusetts, with a principal residence and domicile at 197 Haggetts Pond Road, Andover, Essex County, Massachusetts.

12. Plaintiff Sandra Galley is a citizen of the Commonwealth of Massachusetts, with a principal residence and domicile at 10 Yale Road, Andover, Essex County, Massachusetts.

13. Plaintiff Steven Walther is a citizen of the Commonwealth of Massachusetts, with a principal residence and domicile at 83 Morton Street, Andover, Essex County, Massachusetts.

14. Plaintiff Sara Schmitt is a citizen of the Commonwealth of Massachusetts, with a principal residence and domicile at 7 Knollcrest Drive, Andover, Essex County, Massachusetts.

15. Plaintiff Steven Schmitt is a citizen of the Commonwealth of Massachusetts, with a principal residence and domicile at 7 Knollcrest Drive, Andover, Essex County, Massachusetts.

16. Plaintiff Shilpi Ranjan is a citizen of the Commonwealth of Massachusetts, with a principal residence and domicile at 149 Haggetts Pond Road, Andover, Essex County, Massachusetts.

17. Plaintiff Raghav Ranjan is a citizen of the Commonwealth of Massachusetts, with a principal residence and domicile at 149 Haggetts Pond Road, Andover, Essex County, Massachusetts.

18. Plaintiff Michael Silverman is a citizen of the Commonwealth of Massachusetts, with a principal residence and domicile at 54 Tewksbury Street, Andover, Essex County, Massachusetts.

19. Plaintiff Lennie Silverman is a citizen of the Commonwealth of Massachusetts, with a principal residence and domicile at 5 Tewksbury Street, Andover, Essex County, Massachusetts.

20. Plaintiff Lindsay Concemi is a citizen of the Commonwealth of Massachusetts, with a principal residence and domicile at 19 Graybirch Road, Andover, Essex County, Massachusetts.

21. Defendant Town of Andover is a municipal corporation duly organized under the laws of the Commonwealth of Massachusetts with its principal place of business at 36 Bartlet Street, Andover, Essex County, Massachusetts.

22. Defendant Town of Andover Select Board is a municipal board duly constituted

and organized under the laws of the Commonwealth of Massachusetts with its principal place of business at 36 Bartlet Street, Andover, Essex County, Massachusetts.

23. Defendants Laura M. Gregory, Alexander J. Vispoli, Ellen Townson, Kevin Coffey and Melissa Danisch serve as members of the Town of Andover Select Board, with offices at 36 Bartlet Street, Andover, Essex County, Massachusetts.

24. Defendant Andrew P. Flanagan is the Town Manager of the Town of Andover, with an office at 36 Bartlet Street, Andover, Essex County, Massachusetts.

FACTUAL BACKGROUND

25. Plaintiffs hereby restate and incorporate by reference the allegations and statements contained in the preceding paragraphs of this Verified Complaint.

26. Upon information and belief, the Town acquired the parcels at 51R Haggetts Pond Road (Assessor's Map 195, Lot 1) and 52 Haggetts Pond Road (Assessor's Map 196, Lot 14) by eminent domain pursuant to an instrument of taking dated May 24, 1932 and recorded in the Essex North Registry of Deeds at Book 564, Page 168. Said taking was expressly "for the purpose of creating more sanitary conditions for the protection of the water supply of the Town"

27. Upon information and belief, the 51R and 52 Haggetts Pond Road parcels have been and remain under the care, custody and control of the Town of Andover Water Department since their acquisition. Indeed, the Town's own 2018 *Open Space and Recreation Plan*, page 59, confirms this fact.

28. Upon information and belief, the Town acquired the 0 Haggetts Pond Road parcel (Assessor's Map 195, Lot 2) by deed dated June 26, 1896 and recorded in the Essex North Registry of Deeds at Book 154, Page 456.

29. Upon information and belief, the 0 Haggetts Pond Road parcel is currently under

the care, custody, and control of the Town of Andover Water Department. The Town's 2018 *Open Space and Recreation Plan* states, at page 59, that 0 Haggetts Pond Road is under the control of the Water Department.

30. Town's 2018 *Open Space and Recreation Plan*, at page 59, acknowledges that Town-owned land held under the care, custody and control of the Water Department (like the Property) is protected under and subject to Article 97.

31. Acquisition and dedication of the Property for public water supply protection purposes for more than a century qualifies as a dedication "to the conservation, development and utilization of the agricultural, mineral, forest, water, air, and other natural resources" triggering Article 97 protection. Indeed, it is well established that protection of public water supply is a "public purpose" under Article 97. Consequently, Article 97 legislative approval is required prior to any transfer or change in use of the Property.

32. The Project proposes to pave an approximately 1.18-mile-long and 8-foot-wide impervious asphalt trail (on a previously unimproved, pervious railroad bed), construct a boardwalk through wetlands to the bank of Haggetts Pond, pave and expand an existing pervious parking area, and create a new impervious parking lot.

33. The Project is proposed within or near Bordering Vegetated Wetlands, Riverfront Area of two perennial streams, Bank, and Land Under Water, which are all jurisdictional resources areas protected by the Massachusetts Wetlands Protection Act (M.G.L. c 131, § 40) and the Town of Andover Wetlands Protection Bylaw. Additionally, the Project is proposed within or near Isolated Vegetated Wetlands and vernal pools, which are jurisdictional resources areas protected by the Town of Andover Wetlands Protection Bylaw. These jurisdictional resource areas are significant to private and/or public water supply, groundwater, flood control, storm damage

prevention, prevention of pollution, wildlife habitat, and fisheries. Further, the northern half of the proposed trail is within Natural Heritage Endangered Species Program Priority and Estimated Habitat areas (Priority Habitat 756 and Estimated Habitat 604).

34. The Project will result in significant tree loss. The Town acknowledges that 57 “significant” trees will be removed during the Project; many of those trees are located in close proximity to Haggetts Pond. This does not account for the proposed removal of any additional trees, shrubs, or other vegetation that do not meet the Town’s definition of “significant.” Removal of trees and vegetation so close to Haggetts Pond is contrary to the protection of the public water supply.

35. Additionally, the Town proposes to cut the roots of trees to install a root barrier between the tree roots and new paved trail. There are a significant number of large trees on the Bank of Haggetts Pond that are within feet and inches of the proposed trail and proposed post-and-rail fence, respectively. Cutting the roots of these trees so close to the trunk of the trees will damage trees and may ultimately kill the trees, contrary to the protection of the public water supply.

36. The Project proposes excavation within the old railroad bed, which is likely to contain residual oil and/or hazardous materials. Along some portions of the proposed trail, this excavation will occur within feet of Haggetts Pond and the Town’s public drinking water supply, contrary to the protection of the public water supply.

37. Constructing the Project on the Property constitutes a change in use of the Property from its designated use for protection of public water supply to recreation, and may ultimately require a transfer in care and control of the Property. No legislative approval has been granted for any change in use, transfer or other disposition of the Property.

38. The change in use of Article 97 land would require review under MEPA, as the

Project requires a Superseding Order of Conditions from the Massachusetts Department of Environmental Protection and state agency funding under the MassTrails Grant Program, which is a program within the Executive Office of Energy and Environmental Affairs Office of Grants and Technical Assistance. 301 CMR 11.03(1)(b)(3); 301 CMR 11.01(2)(a)(1). There has been no MEPA filing for the proposed transfer and change in use of the Property.

39. The proposed transfer and change in use of Article 97 land would also require compliance with EEA's Article 97 Land Disposition Policy, which has not been demonstrated.

40. The proposed development of the Property would also be subject to the Act and regulations promulgated thereunder by EEA.

41. The damage caused or about to be caused by Defendants constitutes a violation of multiple statutes, ordinances, by-laws or regulations, the major purpose of which are to prevent or minimize damage to the environment, including but not limited to: (i) Article 97; (ii) the Act; (iii) EEA's Land Disposition Policy; and (iv) the MEPA regulations.

42. The Property was acquired for and/or has been dedicated to Article 97 water protection supply use and, consequently, constitutes land protected by Article 97 of the Massachusetts Constitution. This use cannot be changed, and the land cannot be transferred or otherwise impaired, without a two-thirds vote of the Massachusetts Legislature.

43. Article 97 provides that the people of Massachusetts "shall have the right to clean air and water, freedom from excessive and unnecessary noise, and the natural, scenic, historic, and aesthetic qualities of their environment; and the protection of the people in their right to the conservation, development and utilization of the agricultural, mineral, forest, water, air and other natural resources is hereby declared to be a public purpose", and Property acquired or subsequently devoted to "such purposes shall not be used for other purposes or otherwise disposed of except by

laws enacted by a two-thirds vote, taken by yeas and nays, of each branch of the general court.”

CAUSES OF ACTION

COUNT I – M.G.L. c. 214, § 7A

44. Plaintiffs hereby restate and incorporate by reference the allegations and statements contained in the preceding paragraphs of this Verified Complaint.

45. Defendants’ construction of the Project constitutes a change in use of the Property under Article 97.

46. Plaintiffs have standing to enforce M.G.L. c. 214, 7A as they are more than ten persons domiciled in the Commonwealth.

47. The damage caused or about to be caused by Defendants constitutes a violation of multiple statutes, ordinances, by-laws or regulations the major purpose of which are to prevent or minimize damage to the environment.

48. Through its actions set forth above and its stated intentions moving forward, the damage caused or about to be caused by Defendants is in violation of:

- a. Article 97 of the Massachusetts Constitution;
- b. M.G.L. c. 3, § 5A, An Act Preserving Open Space in the Commonwealth;
- c. EEA’s Article 97 Land Disposition Policy; and
- d. The environmental review process under the MEPA regulations, 301 CMR 11.00.

49. Defendants must be restrained from imminently causing or causing further damage to the environment in violation of the statutes, ordinances, by-laws and regulations set forth above.

COUNT II – DECLARATORY JUDGMENT

50. Plaintiffs hereby restate and incorporate by reference the allegations and statements contained in the preceding paragraphs of this Verified Complaint.

51. There is an actual controversy between Plaintiffs and Defendants over the transfer and change in use of the Property with the requisite Article 97 legislative approval and compliance with other laws.

52. Plaintiffs seek a declaratory judgment that the Property is protected under Article 97 as public land acquired and designated for protection of public water supply, and, therefore, the necessary legislative approval is required prior to any transfer, change in use or other disposition of the Property.

RELIEF REQUESTED

WHEREFORE, the Plaintiffs respectfully request that this Honorable Court:

1. Issue a temporary restraining order and preliminary injunction to prevent construction of the Project or related site preparation work at the Property, until this lawsuit is decided and/or until there is a disposition of the Article 97 property in full compliance with Article 97 procedures;
2. Enter an order declaring that the Property is protected under Article 97 as public land in water supply protection use, and the necessary legislative approval is required prior to any transfer, change in use or other disposition of the Property;
3. Award Plaintiff its costs and expenses for this action, including reasonable attorneys' and experts' fees and expenses, as provided in G.L. c. 214, § 7A; and
4. Such other and further relief as justice so requires.

DEMAND FOR JURY TRIAL

Pursuant to Mass. R. Civ. P. 38(b), Plaintiffs demand a jury trial of all claims so triable.

Respectfully,
Plaintiffs,
By Their attorneys,

Caroline E. Smith

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Dated: April 9, 2025

VERIFICATION

I, Kathleen Grant, verify that I have read the allegations contained in this Verified Complaint; that I have personal knowledge of the facts stated therein; that, other than allegations made upon information and belief, those allegations are true to the best of my knowledge; and that I believe that the allegations made upon information and belief are true.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY THIS 8th DAY OF APRIL 2025.


Kathleen Grant