

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss.

SUPERIOR COURT
C.A. NO. 2012-02464

BOARD OF SELECTMEN OF THE TOWN
OF GRAFTON,

Plaintiff,

v.

JOHN DELLI PRISCOLI, President
GRAFTON & UPTON RAILROAD
COMPANY, AND GRAFTON & UPTON
RAILROAD COMPANY,
Defendants.

ORDER FOR PRELIMINARY INJUNCTION

After review of the pleadings and hearing on the parties' cross-motions for preliminary injunctions, the Court orders the following:

The Defendant Grafton & Upton Railroad's Motion for a Preliminary Injunction is **DENIED**.

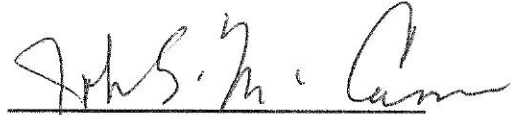
The Plaintiff Town of Grafton's Motion for a Preliminary Injunction is **ALLOWED** as follows:

Effective immediately and until further Order of this Court:

1. The Defendant, Grafton & Upton Railroad, and all of its principals, operators, employees, agents and persons or entities acting on its behalf are hereby **ENJOINED** from delivering LPG storage tanks to the Town of Grafton, and from constructing any part or portion of the proposed LPG facility, including any and all underground and overhead piping;
2. The Defendant, Grafton & Upton Railroad, is further Ordered to comply with the terms of the Cease and Desist Order issued by the Grafton Building Inspector on December 12, 2012;

3. These proceedings will be stayed pending a determination by the Surface Transportation Board on the Defendant's Petition for Declaratory Relief which will be filed pursuant to the parties' Joint Motion for Referral to the Surface Transportation Board.

So Ordered.



McMan, J.
Associate Justice

YSM

CERTIFICATE OF SERVICE

I certify that on this date this document was sent by electronic and First Class Mail to:

John Mavricos, Esq.
Christopher, Hays, Wojick & Mavricos, LLP
446 Main Street
Worcester, MA 01608

Ginny Sinkel Kremer

Date:

a true copy by photostatic process

Attest:
Asst. Clerk



COMMONWEALTH OF MASSACHUSETTS
SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

WORCESTER, SS.

CIVIL ACTION NO. 2012-02464C

BOARD OF SELECTMEN OF THE TOWN)
OF GRAFTON,)
Plaintiff)
vs.)
GRAFTON & UPTON RAILROAD COMPANY,)
Defendant)


ORDER AS TO REFERENCE
TO THE SURFACE
TRANSPORTATION BOARD

After hearing and at the express request of both the Plaintiff and the Defendant in this matter, the Court Orders:

1. This case requires the determination of whether or not the provisions of the Interstate Commerce Commission Termination Act, 49 USC 10501 ("ICCTA"), preempting state and local regulation apply to the construction and operation of a proposed propane transloading facility on the Defendant's property in the Town of Grafton. "Courts have been cognizant of the STB's [Surface Transportation Board] expertise particularly in the area of determining federal preemption [s]ee *Fla. E. Coast Ry. Co. v. City of W. Palm Beach*, 110 F.Supp.2d 1367, 1378 n. 5 (S.D.Fla.2000) ('[A]s the agency with authority delegated from Congress to implement the provisions of the ICCTA, the STB is uniquely qualified to determine whether state law or local law should be pre-empted')" *Grafton and Upton R. Co. v. Town of Milford*, 417 F.Supp.2d 171, 174 -175 (D.Mass.,2006)
2. At the joint request of the Plaintiff and the Defendant, this matter is hereby referred to the Surface Transportation Board for this determination.
3. Upon the filing of a Petition for Declaratory Order with the STB, this proceeding shall be stayed pending a final decision by the STB.
4. By the joint agreement of the parties, it is hereby ordered that the Grafton & Upton Railroad Company Railroad shall file a Petition for Declaratory Order as the Petitioner, with the STB, within 45 days of this Court's Order.

Dated:

6/12/13



John S. McCann, Associate Justice of the
Superior Court

A true copy by photostatic process

Attest:

Asst. Clerk

