

10/20/10 Summons and order of notice by
issue, returnable on October 26, 2010 at 2 PM at
New Bedford Superior Court. (Moses, J.) and

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, SS.

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO.

A10-1277

TEN TAXPAYER GROUP

Petitioners,

v.

CITY OF FALL RIVER
REDEVELOPMENT AUTHORITY
Consisting of the Following Natural
Persons Who are Named Herein Solely
in Their Official Capacity:
William G. Kenney, Chairman
Dylan T. Ferreira, Ronald Rheaume
Thomas Martin Sr., and Ann Keane

Defendants

COMPLAINT

INTRODUCTION

This action is brought as a ten taxpayer lawsuit under Massachusetts General Laws c. 40 § 53. Petitioners seek to prevent the sale of certain lands located in the City of Fall River by the Defendant in violation of the provisions of Massachusetts General Laws c. 30B § 16 that apply to any disposition of real property or interest therein.

PARTIES

1. Petitioners, hereinafter referred to as the "Ten Taxpayer Group" are as listed below are all residents of the City of Fall River in the Commonwealth of Massachusetts:

- a. William J. Kitchen, 92 Hanover St., Fall River, MA 02720
 - b. Robert Mantez, 460 Joseph Drive, Fall River, MA 02720
 - c. Walter J. Ziobro, 212 David St., Fall River, MA 02720
 - d. Timothy J. Bennett, 221 Corbett St., Fall River, MA 02720
 - e. Joseph F. Carvalho, 470 N. Belmont St., Fall River, MA 02720
 - f. Elizabeth Garant, 1961 Yellow Hill Rd., Fall River, MA 02790
 - g. David Lambert, 1580 Copicut Rd., Fall River, MA 02747
 - h. George W. Freeborn, 67 Martha St., Fall River, MA 02720
 - i. Gilbert T. Lussier, 304 Lake Ave., Fall River, MA 02721
 - j. Charles T. Estrella, 497 East Main St., Fall River, MA 02724
 - k. Edward E. Page, 32 Tobin St., Fall River, MA 02723
 - l. June Roberts, 32 Tobin St., Fall River, MA 02723
2. The individual defendants are and were at all times relevant to this Complaint the duly appointed members of the City of Fall River Redevelopment Authority ("Authority").
The individual members of the Authority and their addresses are as follows:
 - a. William G. Kenney, 165 Rock St, Fall River, MA 02720
 - b. Dylan T. Ferreira of 554 Eastern Ave, Fall River, MA 02723
 - c. Ronald Rheaume of 95 Norwood St., Fall River, MA 02723
 - d. Thomas Martin Sr. 785 N. Main St., Unit 2, Fall River, MA 02720
 - e. Ann Keane, address unknown, c/o Alison M. Brett, City Clerk, City of Fall River,
One Government Center, Fall River, MA 02722
3. The aforementioned Board members are named solely in their official capacity as Authority members.

4. The City of Fall River is a duly organized and existing Massachusetts municipality.

JURISDICTION AND VENUE

5. The Massachusetts Superior Court has jurisdiction over this action pursuant to Massachusetts General Laws c. 40 § 53 which states that ten taxable inhabitants of the town may restrain the unlawful exercise or abuse of such corporate power by petitioning the superior court department in which the land concerned is situated.
6. The land concerned is located in the City of Fall River, Massachusetts, located in the county of Bristol, Massachusetts.

FACTS

7. On October 19, 2010 Defendant announced the approval of the sale and optioning to the Mashpee Tribe or its agents for the purpose of casino/gaming and related purposes of certain lands located in Fall River, Massachusetts and Freetown, Massachusetts that are a portion of those lands described in that certain Release Deed dated January 22, 2009, from the Commonwealth of Massachusetts to the Defendant and recorded on March 4, 2009 in Book 7124 at Page 95 of the Bristol County Fall River District Registry of Deeds, which real property contains approximately three hundred (300) acres of land (the "Subject Lands").
8. The Subject Lands were conveyed to the Defendant pursuant to Chapter 266 of the Acts of 2002, An Act Authorizing Certain Conveyances of Land to Establish the Southeastern Massachusetts Bioreserve (the "Bioreserve Act").

9. Pursuant to the Bioreserve Act, the Defendant was granted the right to develop the land for commercial, industrial and other economic development purposes, but expressly excluding any use for casino/gaming related purposes.
10. The sale of the Subject Lands to the Mashpee Tribe or its agents for purposes of casino/gaming related purposes is not in accordance with the purposes and intent of the Bioreserve Act.
11. Prior to entering into the agreement of sale for the Subject Lands, the Defendant failed to follow the procedures as provided in Massachusetts General Laws c. 30B § 16 which would apply to any disposition of real property or interest therein, including failing to solicit proposals for the disposition of the property in accordance with c. 30B § 16 (c), (d) and (f).
12. On May 19, 2010 Defendant requested an opinion from the Commonwealth of Massachusetts, Office of the Inspector General relating to the applicability of Massachusetts General Laws c. 30B § 16 to the Defendant pursuant to the Bioreserve Act as it relates to the development of the Subject Lands for casino/gaming related purposes.
13. On May 27, 2010 Defendant received an opinion from Gregory W. Sullivan, Inspector General stating that Massachusetts General Laws c. 30B § 16 “would apply to any disposition of real property or interest therein not in accordance with the purposes and intent of the Act.” A copy of the opinion is attached hereto, and incorporated herein as Exhibit “A”

COUNT I

14. Petitioner repeats the allegations made in paragraphs numbered 1 through 13 and incorporates them herein by reference.
15. The Bioreserve Act does not provide for disposition of the lands so conveyed in any manner except as specifically provided in the Act.
16. Defendant's action described in paragraphs 3 through 6 is in violation of the intent and purpose of the Bioreserve Act.
17. Defendant has unlawfully exercised its powers in selling the Subject Lands for a purpose that is inconsistent with the intent for which it had acquired the Subject Lands through the Bioreserve Act.
18. As a result of the Defendant's unlawful exercise of its authority, the Subject Lands should be conveyed back to the Commonwealth of Massachusetts as if they had never been conveyed to the Defendant; or in the alternative the Defendant should be restrained from selling the Subject Property for purposes other than as provided in the Bioreserve Act.

COUNT II (M.G.L. c. 30B § 16)

19. Petitioner repeats the allegations made in paragraphs numbered 1 through 18 and incorporates them herein by reference.
20. Defendant's actions as described in paragraphs 3 through 9 are in violation of Massachusetts General Laws c. 30B § 16 that apply to any disposition of real property or interest therein.

21. Defendant's actions to violate Massachusetts General Laws c. 30B § 16 were willful in that Defendant knew or should have known that its actions violated the statute.
22. Defendant's actions are an abuse of its corporate power or authority.
23. As a result, Defendant should be restrained from entering into any agreement regarding the sale or optioning of the subject lands except in the manner as provided in Massachusetts General Laws c. 30B § 16.

COUNT III

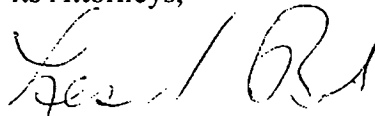
24. Petitioner repeats the allegations made in paragraphs numbered 1 through 23 and incorporates them herein by reference.
25. Petitioner is likely to succeed on the merits of each cause of action set forth herein, including claims under Massachusetts General Laws c. 30B § 16.
26. In the absence of the injunctive relief requested herein, Petitioner will suffer irreparable harm if the sale of the Subject Lands were allowed to continue as proposed by Defendant.
27. A balancing of the harms between Petitioner and the Defendant favors granting preliminary and permanent injunctive relief.
28. The Petitioner requests that the Court issue an injunction requiring the Defendant to refrain from any further and future action relating to the sale of the Subject Lands to any third party.
29. In the absence of such injunctive relief the Petitioners will suffer irreparable harm.

WHEREFORE, Petitioner respectfully requests that this honorable court grant the following relief:

1. Declare the Defendant's sale or other disposition of the Subject Land for purposes of casino/gaming and related purposes to be an unlawful exercise of its authority;
2. Declare the Defendant's failure to follow M.G.L. c. 30B § 16 for the disposition of the Subject Lands is an abuse of its corporate power or authority;
3. Enter a preliminary and permanent injunction ordering Defendant to refrain from any further and future action relating to the sale of the Subject Lands for purposes of casino/gaming and related purposes;
4. Issue an injunction directing the Defendant to follow all requirements of M.G.L. c. 30B § 16 for any allowed sale of the Subject Lands; and
5. Any other further relief as this Court deems is just and appropriate.

Respectfully submitted,

Ten Taxpayer Group
By its Attorneys,



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Dated: October 22, 2010