

TOWN OF SUDBURY
Office of the Town Counsel

September 21, 2007

Maureen G. Valente, Town Manager
Town of Sudbury
278 Old Sudbury Road
Sudbury, MA 01776

RE: Bruce Freeman Rail Trail

Dear Maureen:

I have received the reports of the title review regarding the proposed rail trail and report that in my opinion the title thereto is sufficient in the Commonwealth to proceed to enter into a lease arrangement at this time.

Three parcels are limited to "location grant," which is only an easement (not the fee) in the land. There is also one parcel whose title specified a reversion to the grantor if the "[rail]road is given up." Neither situation applies unless the railroad is determined to be abandoned under Massachusetts state law or in some circumstances Federal law. The deeds do not assert any ownership interest of the abutters in the RROW.

In Massachusetts courts establishing that a railroad has abandoned its easement is extremely difficult. Rail service on the proposed Bruce Freeman Rail Trail corridor was suspended, not abandoned in 1982, due to a lack of demand. Accordingly, I believe it is safe to assume there has been no intention to abandon the railroad easements. The Commonwealth of Massachusetts has a strong interest in preserving the corridor for future transportation uses, supported by its decision to lease, rather than sell, the right-of-way to Towns for use as a rail trail. The stated purpose is to "preserve the corridor for resumption of rail service in the future." "M.G.L. c. 161C declares an intent to insure 'the maintenance and operation of adequate and efficient rail rights of way' § 1, and gives the Commonwealth the right of first refusal when railroad corridors are sold, § 7. M.G.L. c. 40 § 54A prohibits the building of structures on former railroad rights-of-way without a permit from the Executive Office of Transportation. M.G.L. c. 160 §§ 88 and 114 prohibit acquisition of railroad land by and rights-of-way across railroad locations by prescription."

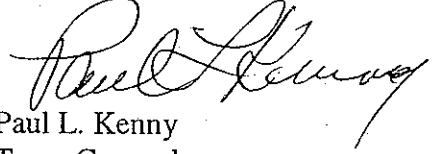
Based on the foregoing and the title examination, it is my opinion that the Commonwealth has valid title in fee or by easement in the Phase II portion of the Bruce Freeman Rail Trail in Sudbury.

MGV
copy
Post Bruce
Scan in
John
D. Hove

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If you require further information, please advise.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Paul L. Kenny".

Paul L. Kenny
Town Counsel

CC: Board of Selectmen