

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

FRANKLIN, ss.

**FRANKLIN SUPERIOR COURT
CASE NO.:**

**DEBORAH SNOW and
BARBARA WHITE,
Plaintiffs**

v.

**TOWN OF MONTAGUE,
Defendant**

)
)
)
)
)
)
)
)
)
)

**PLAINTIFFS' EMERGENCY EX PARTE MOTION FOR TEMPORARY
RESTRAINING ORDER AND FOR PRELIMINARY INJUNCTION**

Now come the Plaintiffs, by and through counsel, and hereby move this Court, pursuant to M. R. Civ. P. 65, and ex parte pursuant to Rule 9A of the Superior Court Rules, for a temporary restraining order that the Town of Montague (the "Town") be restrained from commencing a public works project known as Town of Montague Complete Streets Tier 3, and more specifically that portion of the project that would close or discontinue a section of North Street in Montague Center directly in front of the Plaintiffs' home.

As grounds for this Motion, Plaintiffs say that they live in an historic home in Montague Center with frontage and a driveway on North Street. Without providing any notice to the Plaintiffs, the Town already has signed a contract with a third party vendor to discontinue the portion of North Street that abuts Plaintiffs' property. The Town has stated that the project may begin in a matter of days but has not provided a specific start date.

The Court should grant a preliminary injunction to the Plaintiffs in this case because:

- 1) Plaintiffs are likely to succeed at trial of their underlying claims;
- 2) Plaintiffs will suffer irreparable harm if the injunction is not granted; and
- 3) The potential harm to the Plaintiffs far outweighs whatever harm the injunction would cause the Town of Montague.

7 Smith et al., *Rules Practice* § 65.4 (2nd ed. 2007).

- 1) Plaintiffs are likely to succeed at trial on their statutory claim.

The Town's work would construct new "green space" in front of the Plaintiffs' home, and extend the Plaintiffs' existing driveway 31 feet in order to connect with Main Street. An illustration of the plan is attached hereto as Exhibit 1.

The Town has not complied with the requirements of G. L. c. 82, §§ 21 and 22 which requires approval by Town Meeting, or, at least notice to abutters. The Town has refused to provide timely information to the Plaintiffs as to the project specifications, as required by statute, and therefore the Plaintiffs are likely to prevail at trial.

Discontinuance of a public way requires approval at a Town Meeting. “A town way may be discontinued by vote of the town and not otherwise.” *Mahan v. Rockport*, 287 Mass. 34, 37 (1934). The discontinuance of a portion of the town way is also subject to these requirements. *Inhabitants of Cohasset v. Moors*, 204 Mass. 173 (1919). This project has not been approved at Town Meeting.

Alternatively, if the Town claims that it is not discontinuing but merely relocating a portion of North Street, G.L. c. 82, § 22 requires that abutters be given a written notice of the Town’s intention to relocate or alter the town way. The Town has not given such statutorily required notice to the Plaintiffs.

2) Plaintiffs will suffer irreparable harm.

The Town has shockingly refused to answer the Plaintiffs’ questions about: a) who will own and maintain the additional green space to be installed in front of their home; b) who will maintain the additional 31 feet of driveway to be connected to the Plaintiffs’ existing driveway; c) who will be permitted to use and traverse the new green space and driveway extension; d) whether the Plaintiffs’ property will be non-conforming under the Town’s zoning by-laws if reconstruction is necessary; and e) what legal rights to access the property will be conveyed to the Plaintiffs to ensure that their home does not become “landlocked.”

Without these answers, the Plaintiffs are likely to suffer irreparable harm, as the entire character of their home and property will be changed.

3) Potential harm to the Town is minimal.

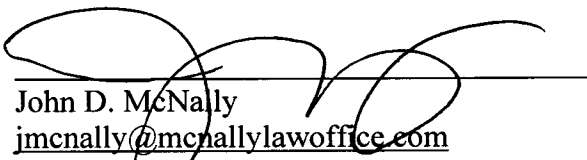
Plaintiffs seek only to require that the Town follow statutory requirements. There are also alternative designs available to accomplish the Town’s stated objectives for the project, as evidenced by earlier drafts of design plans. The balance of potential harms favors the granting of Plaintiffs’ petition.

As further grounds for this Motion, the Plaintiffs rely on their Verified Complaint.

The Plaintiffs further request that the Court issue a short order of notice to the Town to show cause why the Court should not issue a preliminary injunction enjoining the Town and those acting in concert with it from commencing a public works project known as Town of Montague Complete Streets Tier 3, and specifically that portion of the project that would close or discontinue a section of North Street in Montague Center directly in front of the Plaintiffs’ home until such time as the Town has complied with the requirements of G. L. c. 82, §§ 21 and 22 requiring notice to abutters, and approval by Town Meeting.

WHEREFORE, the Plaintiffs respectfully request that their Motion be allowed and that a Temporary Restraining Order and Short Order of Notice be entered in the proposed form attached hereto, and that the Court waive the requirement of M. R. Civ. P. 65(c) that Plaintiffs provide security for the issuance of the above Orders because Plaintiffs cannot afford to provide such security as they seek to enforce their statutory rights.

The Plaintiffs
By their attorney,



John D. McNally
jmcnally@mcnallylawoffice.com
17 New South Street, Suite 202
Northampton, MA 01060
Telephone: (413) 586-3030
Fax: (413) 586-3080
BBO No.: 568144

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF THE TRIAL COURT

FRANKLIN, ss.

FRANKLIN SUPERIOR COURT
CASE NO.:

DEBORAH SNOW and
BARBARA WHITE,
Plaintiffs

v.

TOWN OF MONTAGUE,
Defendant

)
)
)
)
)
)
)
)
)
)

TEMPORARY RESTRAINING ORDER AND SHORT ORDER OF NOTICE

This matter having come before the Court on the Plaintiffs' *Ex Parte* Motion for Temporary Restraining Order, it is hereby **ORDERED** that Defendant Town of Montague (hereinafter "the Town") and all persons acting in concert with it are temporarily restrained and enjoined from commencing a public works project known as Town of Montague Complete Streets Tier 3, and specifically that portion of the project that would close or discontinue a section of North Street in Montague Center directly in front of the Plaintiffs' home, until such time as the Court shall hear and determine the Plaintiffs' Motion for Preliminary Injunction pursuant to Verified Complaint.

It is further **ORDERED** that Plaintiffs' Motion for Preliminary Injunction pursuant to Verified Complaint shall be served on the Defendant with this Order and shall be scheduled for hearing on _____, 2026, at _____ am/pm, in the Franklin Superior Court, Greenfield, Massachusetts, at which time and place the Town shall appear and show cause why the Court should not issue the requested preliminary injunction.

BY THE COURT

_____, J.

Dated: _____, 2026

EXHIBIT 1



Bowman

PROJECT #:	DATE:	DESIGNER:	DRAFTER:	REVIEWER:
312871-01-000	12/22/2016	NAV	NAV	PMF

[illegible]