

HOUSE No. 03416

The Commonwealth of Massachusetts

PRESENTED BY:

Carolyn C. Dykema

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to protection of open space.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Frank I. Smizik</i>	<i>15th Norfolk</i>
<i>Jennifer E. Benson</i>	<i>37th Middlesex</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>Chris Walsh</i>	<i>6th Middlesex</i>

HOUSE No. 03416

By Ms. Dykema of Holliston, a petition (accompanied by bill, House, No. 3416) of Frank I. Smizik and others relative to the sale or conversion of certain tax exempt property. Revenue.

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act relative to protection of open space.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 An Act Relative to the Sale or Conversion of Tax-Exempt Property.

2 SECTION 1. The General Laws are hereby amended by inserting, after chapter 61B, the
3 following chapter:-

4 CHAPTER 61C

5 SALE OR CONVERSION OF TAX-EXEMPT PROPERTY

6

7 Section 1. All privately owned real property which is, by-right, exempt from property taxation
8 for 2 or more years due to non-profit status, shall not be sold for, or converted to, residential,
9 industrial or commercial use while so exempted or within 1 year after that time, unless the city or

10 town in which the land is located has been notified of the intent to sell for, or to convert to, such
11 other use.

12 Any notice of intent to sell for such other use shall be accompanied by a statement of intent to
13 sell, a statement of proposed use of the land, the location and acreage of land as shown on a map
14 drawn at the scale of the assessors map in the city or town in which the land is situated, and the
15 name, address and telephone number of the landowner.

16 Any notice of intent to sell for other use shall be accompanied by a certified copy of an executed
17 purchase and sale agreement specifying the purchase price and all terms and conditions of the
18 proposed sale, which is limited to only the property classified under this chapter, and which shall
19 be a bona fide offer as described below.

20 Any notice of intent to sell for other use shall also be accompanied by any additional agreements
21 or a statement of any additional consideration for any contiguous land under the same ownership,
22 and not classified under this chapter, but sold or to be sold contemporaneously with the proposed
23 sale.

24 For the purposes of this chapter, a bona fide offer to purchase shall mean a good faith offer, not
25 dependent upon potential changes to current zoning or conditions or contingencies relating to the
26 potential for, or the potential extent of, subdivision of the property for residential use or the
27 potential for, or the potential extent of development of the property for industrial or commercial
28 use, made by a party unaffiliated with the land-owner for a fixed consideration payable upon
29 delivery of the deed.

30 Any notice of intent to convert to other use shall be accompanied by a statement of intent to
31 convert, a statement of proposed use of such land, the location and acreage of land as shown on a

32 map drawn at the scale of the assessors map in the city or town in which the land is situated, the
33 name, address and telephone number of the landowner and the landowner's attorney, if any.

34 The notice of intent to sell or convert shall be sent by the landowner by certified mail or hand
35 delivered to the mayor and city council of a city, or board of selectmen of a town, and in the case
36 of either a city or a town, to its board of assessors, to its planning board and conservation
37 commission, if any.

38 A notarized affidavit that the landowner has mailed or delivered a notice of intent to sell or
39 convert shall be conclusive evidence that the landowner has mailed the notice in the manner and
40 at the time specified. Each affidavit shall have attached to it a copy of the notice of intent to
41 which it relates.

42 The notice of intent to sell or convert shall be considered to have been duly mailed if addressed
43 to the mayor and city council or board of selectmen in care of the city or town clerk; to the
44 planning board and conservation commission if addressed to them directly; to the state forester if
45 addressed to the commissioner of the department of conservation and recreation and to the
46 assessors if addressed to them directly.

47 If the notice of intent to sell or convert does not contain all of the material as described above,
48 then the town or city, within 30 days after receipt, shall notify the landowner in writing that
49 notice is insufficient and does not comply.

50 For a period of 120 days after the day following the latest date of deposit in the United States
51 mail of any notice which complies with this section, the city or town shall have, in the case of
52 intended sale, a first refusal option to meet a bona fide offer to purchase the land.

53 In the case of intended or determined conversion not involving sale, the municipality shall have
54 an option to purchase the land at full and fair market value to be determined by an impartial
55 appraisal performed by a certified appraiser hired at the expense of the municipality or its
56 assignee, the original appraisal to be completed and delivered to the landowner within 30 days
57 after the notice of conversion to the municipality. In the event that the landowner is dissatisfied
58 with the original appraisal, the landowner may, at the landowner's expense contract for a second
59 appraisal, to be completed within 60 days after the delivery of the notice to convert. If, after
60 completion of the second appraisal, the parties cannot agree on a consideration, the parties will
61 contract with a mutually acceptable appraiser for a third appraisal whose cost will be borne
62 equally by both parties. The third appraisal shall be delivered to both parties within 90 days after
63 the notice of conversion to the municipality and shall be the final determination of consideration.
64 Upon agreement of a consideration, the city or town shall then have 120 days to exercise its
65 option. During the appraisal process, the landowner may revoke the intent to convert at any time
66 and with no recourse to either party.

67 The option may be exercised only after a public hearing followed by written notice signed by the
68 mayor or board of selectmen, mailed to the landowner by certified mail at the address that is
69 specified in the notice of intent. Notice of the public hearing shall be given in accordance with
70 section 23B of chapter 39.

71 The notice of exercise shall also be recorded at the registry of deeds and shall contain the name
72 of the record owner of the land and description of the premises adequate for identification of
73 them.

74 The notice to the landowner of the city or town's election to exercise its option shall be
75 accompanied by a proposed purchase and sale contract or other agreement between the city or
76 town and the landowner which, if executed, shall be fulfilled within a period of not more than 90
77 days after the date the contract or agreement, endorsed by the landowner, is returned by certified
78 mail to the mayor or board of selectmen, or upon expiration of any extended period that the
79 landowner has agreed to in writing, whichever is later.

80 At the public hearing or a further public hearing, the city or town may assign its option to a
81 nonprofit conservation organization or to the commonwealth or any of its political subdivisions
82 under the terms and conditions that the mayor or board of selectmen may consider appropriate.
83 Notice of the public hearing shall be given in accordance with section 23B of chapter 39.

84 If the first refusal option has been assigned to a nonprofit conservation organization or to the
85 commonwealth or any of its political subdivisions as provided in this section, the mayor or board
86 of selectmen shall provide written notice of assignment to the landowner.

87 The notice of assignment shall state the name and address of the organization or agency of the
88 commonwealth which will exercise the option in addition to the terms and conditions of the
89 assignment. The notice of assignment shall be recorded with the registry of deeds.

90 Failure to record either the notice of exercise or the notice of assignment within the 120 day
91 period shall be conclusive evidence that the city or town has not exercised its option.

92 If the option has been assigned to a nonprofit conservation organization or to the commonwealth
93 or any of its political subdivisions, the option may be exercised by the assignee only by written
94 notice to the landowner signed by the assignee, mailed to the landowner by certified mail at the
95 address that is specified in the notice of intent.

96 The notice of exercise shall also be recorded with the registry of deeds and shall contain the
97 name of the record owner of the land and description of the premises adequate for identification
98 of them.

99 The notice of exercise to the landowner shall be accompanied by a proposed purchase and sale
100 contract or other agreement between the assignee and landowner which, if executed, shall be
101 fulfilled within a period of not more than 90 days, or upon expiration of any extended period that
102 the landowner has agreed to in writing, from the date the contract or agreement, endorsed by the
103 landowner, is returned by certified mail to the assignee.

104 During the 120 day period, the city or town or its assignees, shall have the right, at reasonable
105 times and upon reasonable notice, to enter upon the land for the purpose of surveying and
106 inspecting said land, including but not limited to soil testing for purposes of Title V and the
107 taking of water samples.

108 The city or town or its assignee shall have all rights assigned to the buyer in the purchase and
109 sales agreement contained in the notice of intent.

110 If the city or town elects not to exercise the option, and not to assign its right to exercise the
111 option, the city or town shall send written notice of nonexercise signed by the mayor or board of
112 selectmen to the landowner by certified mail at the address that is specified in the notice of
113 intent. The notice of nonexercise shall contain the name of the owner of record of the land and
114 description of the premises adequate for identification of them, and shall be recorded with the
115 registry of deeds.

116 No sale or conversion of the land shall be consummated until the option period has expired or the
117 notice of nonexercise has been recorded with the registry of deeds, and no sale of the land shall

118 be consummated if the terms of the sale differ in any material way from the terms of the
119 purchase and sale agreement which accompanied the bona fide offer to purchase as described in
120 the notice of intent to sell except as provided herein.

121 This section shall not apply to a mortgage foreclosure sale, but the holder of a mortgage shall, at
122 least 90 days before a foreclosure sale, send written notice of the time and place of the sale to the
123 parties in the manner described in this section for notice of intent to sell or convert, and the
124 giving of that notice may be established by an affidavit as described in this section.