

**HOUSE . . . . . No. 2492**

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**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 adoption of the accompanying bill:

An Act relative to protection of open space.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Carolyn C. Dykema</i>	<i>8th Middlesex</i>
<i>Angelo M. Scaccia</i>	<i>14th Suffolk</i>
<i>Jennifer E. Benson</i>	<i>37th Middlesex</i>
<i>Michael O. Moore</i>	<i>Second Worcester</i>
<i>Barbara A. L'Italien</i>	<i>Second Essex and Middlesex</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>Frank I. Smizik</i>	<i>15th Norfolk</i>
<i>Richard J. Ross</i>	<i>Norfolk, Bristol and Middlesex</i>
<i>Kate Hogan</i>	<i>3rd Middlesex</i>
<i>Chris Walsh</i>	<i>6th Middlesex</i>

**HOUSE . . . . . No. 2492**

By Ms. Dykema of Holliston, a petition (accompanied by bill, House, No. 2492) of Carolyn C. Dykema and others relative to the sale or conversion of certain tax-exempt property. Revenue.

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE HOUSE, NO. 2550 OF 2013-2014.]

**The Commonwealth of Massachusetts**

**In the One Hundred and Eighty-Ninth General Court  
(2015-2016)**

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

3 CHAPTER 61C

4 SALE OR CONVERSION OF TAX-EXEMPT PROPERTY

5 Section 1. All privately owned real property which is, by-right, exempt from property  
6 taxation for 2 or more years due to non-profit status, shall not be sold for, or converted to,  
7 residential, industrial or commercial use while so exempted or within 1 year after that time,  
8 unless the city or town in which the land is located has been notified of the intent to sell for, or to  
9 convert to, such other use.

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

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

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

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

28 Any notice of intent to convert to other use shall be accompanied by a statement of intent  
29 to convert, a statement of proposed use of such land, the location and acreage of land as shown  
30 on a map drawn at the scale of the assessors map in the city or town in which the land is situated,  
31 the name, address and telephone number of the landowner and the landowner's attorney, if any.

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

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

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

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

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

51           In the case of intended or determined conversion not involving sale, the municipality  
52 shall have an option to purchase the land at full and fair market value to be determined by an  
53 impartial appraisal performed by a certified appraiser hired at the expense of the municipality or

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

65           The option may be exercised only after a public hearing followed by written notice  
66 signed by the mayor or board of selectmen, mailed to the landowner by certified mail at the  
67 address that is specified in the notice of intent. Notice of the public hearing shall be given in  
68 accordance with section 20 of chapter 30A.

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

72           The notice to the landowner of the city or town's election to exercise its option shall be  
73 accompanied by a proposed purchase and sale contract or other agreement between the city or  
74 town and the landowner which, if executed, shall be fulfilled within a period of not more than 90  
75 days after the date the contract or agreement, endorsed by the landowner, is returned by certified

76 mail to the mayor or board of selectmen, or upon expiration of any extended period that the  
77 landowner has agreed to in writing, whichever is later.

78           At the public hearing or a further public hearing, the city or town may assign its option to  
79 a nonprofit conservation organization or to the commonwealth or any of its political subdivisions  
80 under the terms and conditions that the mayor or board of selectmen may consider appropriate.  
81 Notice of the public hearing shall be given in accordance with section 20 of chapter 30A.

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

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

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

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

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

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

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

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

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

114           No sale or conversion of the land shall be consummated until the option period has  
115   expired or the notice of nonexercise has been recorded with the registry of deeds, and no sale of  
116   the land shall be consummated if the terms of the sale differ in any material way from the terms  
117   of the purchase and sale agreement which accompanied the bona fide offer to purchase as  
118   described in the notice of intent to sell except as provided herein.

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