

**HOUSE . . . . . No. 3416**

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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>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. 3416**

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 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

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

11 Any notice of intent to sell for such other use shall be accompanied by a statement of  
12 intent to sell, a statement of proposed use of the land, the location and acreage of land as shown

13 on a map drawn at the scale of the assessors map in the city or town in which the land is situated,  
14 and the name, address and telephone number of the landowner.

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

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

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

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

33 The notice of intent to sell or convert shall be sent by the landowner by certified mail or  
34 hand delivered to the mayor and city council of a city, or board of selectmen of a town, and in

35 the case of either a city or a town, to its board of assessors, to its planning board and  
36 conservation commission, if any.

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

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

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

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

52 In the case of intended or determined conversion not involving sale, the municipality  
53 shall have an option to purchase the land at full and fair market value to be determined by an  
54 impartial appraisal performed by a certified appraiser hired at the expense of the municipality or  
55 its assignee, the original appraisal to be completed and delivered to the landowner within 30 days  
56 after the notice of conversion to the municipality. In the event that the landowner is dissatisfied

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

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

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

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

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

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

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

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

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

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

98           The notice of exercise to the landowner shall be accompanied by a proposed purchase  
99 and sale contract or other agreement between the assignee and landowner which, if executed,

100 shall be fulfilled within a period of not more than 90 days, or upon expiration of any extended  
101 period that the landowner has agreed to in writing, from the date the contract or agreement,  
102 endorsed by the landowner, is returned by certified mail to the assignee.

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

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

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

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

120         This section shall not apply to a mortgage foreclosure sale, but the holder of a mortgage  
121 shall, at least 90 days before a foreclosure sale, send written notice of the time and place of the

122 sale to the parties in the manner described in this section for notice of intent to sell or convert,  
123 and the giving of that notice may be established by an affidavit as described in this section.