**Select Board**

**Meeting Minutes**

**REMOTE MEETING ONLY**

**January 31, 2022, 6:00 pm**

Present: Chair Keyes, Selectman Arcudi, Selectwoman Hazard, Town Administrator Schindler

Chair Keyes called the meeting to order at 6:05PM. Chair Keyes began the meeting with the Pledge of Allegiance.

Chair Keyes read the purpose below for entering Executive Session.

Selectwoman Hazard moved to enter executive session per the purpose specified by Chair Keyes. Selectman Arcudi seconded the motion.

Arcudi – Aye, Hazard – Aye, Keyes – Aye

Executive Session: Motion: To move into Executive Session, pursuant to M.G.L. c.30A, § 21(a) for item # (3): To discuss strategy with respect to litigation that an open meeting may have a detrimental effect on the litigation position of the public body and the chair so declares. Roll Call Vote

Purpose: Litigation strategy re: Town v. Jon Delli Priscoli, Trustee of the One Hundred Forty Realty Trust, et als, Attorneys Brian Riley and Peter Durning present.

Board returned to Open Session.

Old Business

Review and Approve Reduced Hours (due to COVID) for Annual Election on May 10, 2022 (Vote)

Selectwoman Hazard stated that she spoke with the Town Clerk, Lisa Pedroli regarding this item. Selectwoman Hazard stated that with previous elections there were COVID options available such as mail-in ballots and early election hours. These additional options have been removed and the Town is back to the traditional way of voting. Selectwoman Hazard stated that since these additional options have been removed, the Town should have a full voting day like they did prior to COVID. If the additional voting options become available by the State, then Selectwoman Hazard feels that the Board could revisit this item.

Selectwoman Hazard moved to have voting from 7AM-8PM on Tuesday May 10, 2022 at the Draper Gym. Selectman Arcudi seconded the motion.

Arcudi – Aye, Hazard – Aye, Keyes – Aye

Update regarding Town v. Jon Delli Priscoli, Trustee of the One Hundred Forty Realty Trust, et als.

Attorney Peter Durning stated that he will be going over the decision that Judge Rubin and the Land Court came to on Friday afternoon. Durning stated that the important item to understand is with the motion to vacate the stipulation of dismissal which the Town of Hopedale had filed with the Land Court. The question before Judge Rubin was would the Court agree that under rule of Civil Procedure 60B6 that extraordinary circumstances existed where by the Land Court should vacate the stipulation of dismissal and reopen the case in the Land Court. At the time the Town had filed, the matter had been closed. The extraordinary circumstances that the Town of Hopedale cited was primarily the decisions issued by Judge Goodwin in the Superior Court, where in, Judge Goodwin when she ruled that the appropriation did not satisfy the requirement and the Town would need to acquire a separate appropriation if the land transaction was going to proceed under General Laws, Chapter 40 Section 14. Without the separate appropriation, the land transfer could not go forward. With Judge Goodwin’s ruling, the appropriation that the Town originally made for the original acquisition could not be applied to the acquisition that was contemplated by the settlement agreement. The Town had open to it several options, Judge Goodwin stated that one of these options was for the Town to pursue the full exercise of the right of first refusal under General Law, Chapter 61 Section 8. The Town brought these circumstances to the Land Court Judge and in the Town’s request in the motion to vacate stated that, Judge Goodwin’s parameters executed the extraordinary circumstances. Judge Rubin’s decision declined to exercise the discretion she has under 60B6, concluding that the Superior Courts determination that the appropriation was not appropriate did not, by itself, constitute extraordinary circumstances. Judge Rubin took note of arguments made by GU RR, that the land purchases by the settlement agreement was one element of an arrange of consideration that is concession being made between the parties. Judge Rubin denied the Towns motion to vacate the stipulation of dismissal in her January 28, 2022, decision. Attorney Durning stated that the Town has 30 days to file an appeal, if the Municipality is considered and agency of the Commonwealth then the Town would have 60 days to file an appeal.

Attorney Riley stated that he agrees with Attorney Durning’s interpretation of the decisions. In the Superior Court matter, Riley filed a motion to extend the injunction pertaining to the Railroad not making any movement on the land until May 1, 2022. Riley stated that he has not received a response from the Courts regarding this yet.

Chair Keyes asked the Select Board to make a decision regarding the Appeal portion at tonight’s meeting. Attorney Durning stated that he has had conversations with Attorney Laurie and Attorney Racer, who represent the Citizen Lawsuit as well as Attorney Keavaney with the GU RR. Durning stated that he formulated and came up with legal strategy independently.

Non-Resident, Rob Fahey, asked Attorney Durning what his opinion is regarding Judge Rubin’s response to the Town not holding an additional Town Meeting. Durning stated that Judge Rubin notes in her decision. Ultimately, Judge Rubin rests that whether the Town Meeting vote was taken or not, this did not animate her decision. There was sufficient consideration in the settlement agreement. Beyond whether or not the appropriation is ever ratified by the Town. While Judge Rubin noted that it was somewhat speculative to conclude that Town Meeting would or would not authorize the appropriation.

Resident, Liz Reilly, a member of the Citizen Lawsuit, stated that Attorney Laurie feels that an appeal is worthwhile and asked the Board why they would not consider meeting with her Counsel to discuss this before voting. Attorney Durning stated that he mentioned in his earlier statements that he has spoken with Attorney Laurie and Attorney Racer last Friday. Durning stated that this is a conclusion of his legal opinion and interpretation of what Judge Rubin concluded and his independent assessment of whether or not an appeal would be successful. This is what he is bound to do for the Select Board. Liz again stated that she does not understand why the Board would not come to her Counsel to discuss their legal actions. Attorney Harley Racer stated that his opinion is that there are inconsistent rulings between the Superior Court and the Land Court. This would make a good appeal. Attorney Durning stated that the notion that the injunction should remain while the Town is working through these issues is something they indorse. Durning feels that there is an aspect to understand the proceedings that the two prospective courts were asked two distinctive questions. The Land Court was asked to vacate a stipulation of dismissal under 60B6 if it finds extraordinary circumstances. Regarding this ruling, Attorney During does not feel it conflicts with the Superior Courts conclusion that the appropriation of money needs to be consistent with General Laws Chapter 40, section 14. These are distinct concerns in Attorney Durning’s opinion. Chair Keyes stated that if Attorney Durning would like 48 hours to discuss with Attorney Laurie and Attorney Racer before the Board makes a decision regarding an appeal they can do so. Attorney Durning stated that he does not feel the Town is in a time crunch to file the appeal, the Board could postpone to a subsequent meeting by next week. Chair Keyes confirmed that the Board will meet next week to vote for the appeal, a vote will not be taken tonight.

Selectman Arcudi moved to adjourn. Selectwoman Hazard seconded the motion.

Arcudi – Aye, Hazard – Aye, Keyes – Aye

Chair Keyes dissolved the meeting at 9:09PM

*Submitted by:*

*\_\_Lindsay Mercier\_\_\_\_\_\_\_\_\_
Lindsay Mercier, Executive Assistant*

*Adopted:2/14/2022*