COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS	LAND COURT DEPARTMENT OF THE TRIAL COURT
TOWN OF HOPEDALE Plaintiff ELIZABETH REILLY, ET AL Intervener-Plaintiffs vs. JON DELLI PRISCOLI and MICHAEL R. MILANOSKI, as Trustees of the ONE HUNDRED FORTY REALTY TRUST and GRAFTON & UPTON RAILROAD COMPANY Defendants	CASE NO.20MISC 00467 (DRR)

SUR REPLY OF GRAFTON & UPTON RAILROAD COMPANY AND ONE HUNDRED FORTY REALTY TRUST IN OPPOSITION TO THE INTERVENER-PLAINTIFFS' MOTION TO VACATE STIPULATION OF DISMISSAL[1]

The G&U Parties submit this sur reply in further opposition to the Intervener-Plaintiffs' Mass. R. Civ. P. 60(b)(6) Motion to Vacate the Stipulation of Dismissal, to briefly address the following issues raised (or not raised) by the Interveners in their reply brief.

I. Like the Town, the Interveners Selectively Quote the Relevant Rulings.

The Interveners set forth the premise of their reply at page 2 in which they complain that the G&U Parties, "yet again, ask[] this Court to ignore the Appeals Court Remand Decision and Rescript to the Land Court." Similar acerbic arguments and inflammatory accusations pepper the remainder of the Interveners' filing. Not present, however, is any attempt by the Interveners to

[1] The Amended Verified Complaint filed by the Interveners on January 4 will be subject to a motion to dismiss for lack of subject matter jurisdiction on account of the Intervener's lack of standing. Allowance of the motion to dismiss would moot the Interveners' motion to vacate the stipulation of dismissal entered into by the Town and the G&U Parties.

square the balance of their argument with those portions of the Reilly decision (or the underlying Superior Court decision) which are unfavorable to them. Indeed, at no point in their characteristically forceful filing do the Interveners even acknowledge the following unfavorable findings.

The Interveners make no mention of the portion of the Superior Court judgment, and rescript in Reilly, holding that they lacked standing to obtain:

> "declarations that the board's waiver of its c. 61 option as part of the settlement agreement was void, that the town's c. 61 rights remain enforceable, that the restructured transaction by which the railroad obtained control of the trust and its beneficial interest triggered the town's option, that all forest land held by the trust be transferred to the town with no easements, and that the railroad be prevented from alienating the forest land or converting any of it from its current use.

Reilly v. Hopedale, 102 Mass. App. Ct. 367, 378 (2023) (emphases added). The Appeals Court explicitly stated that none of this relief was available to the Interveners under any statutory theory, including G.L. c. 40, § 53.

Nor do the Interveners acknowledge the strict limitations of Section 53 as described by the Appeals Court. The court noted that Count I of the Superior Court complaint was brought under Section 53 "against the [Town's Selectboard] and sought to enjoin the board from expending funds under the settlement agreement." Reilly, 102 Mass. App. Ct. at 373. The Appeals Court was clear that relief under Section 53 is limited to an injunction against municipal expenditures, and does not extend to relief "to restrain cities and towns from carrying out invalid contracts, and performing other similar wrongful acts." Id. at 378, citing Pratt v. Boston, 396 Mass. 37, 42 (1985), and Fuller v. Trustees of Deerfield Academy, 252 Mass. 258, 259 (1925). The Appeals Court then identified specific relief that was not available to the Interveners under Section 53, including a declaration that the Town's waiver of its G.L. c. 61 option was void. It then confirmed that the Interveners were required to "show a statutory foundation for standing apart from G. L. c. 40, § 53, in order to

challenge a town's entering into a contract or settlement." Id. at 378 (emphasis added). Finally, the Appeals Court affirmed the Superior Court's determination that the Interveners failed (under Count II) to show any separate statutory standing to obtain that relief.

To summarize the holdings of the Appeals Court which were not addressed in the Interveners' reply:

1. Count I was brought under Section 53 and "sought to enjoin the town from expending funds under the settlement agreement because the expenditure had not been authorized at a town meeting." Id.
2. Section 53 does not authorize relief against towns from "carrying out invalid contracts, and performing other similar wrongful acts." Id.
3. The Interveners lack standing under any other statutory theory to void the Selectboard's waiver of its c. 61 option as part of the settlement agreement, or to have the Town's c. 61 rights declared enforceable.

Despite these holdings, the Interveners argue that the result of Count I—which they brought pursuant to G.L. c. 40, § 53—is that the "Town's Option remains enforceable, as recognized by the Appeals Court." Reply, p. 10. The Interveners assert that the G&U Parties are attempting to "muddy the water, [but] the Decision is not ambiguous, confusing, or inconsistent." Reply, p. 4. Certainly, if the Interveners' interpretation of Reilly were correct and the Appeals Court nullified the settlement agreement, or rendered it "not effective, not validated, not executable" (even though it was indisputably already executed on February 9, 2021), the outcome would be inconsistent with the above-quoted holdings. Likely for this reason, the Interveners ignore the unfavorable holdings and attempt to browbeat the G&U Parties and the Court into accepting their preferred reading of the Reilly decision.

II. The Appeals Court Did Not Make Any Order With Respect to the Motions to Vacate.

Throughout their reply the Interveners portray the Reilly decision as if it commands this Court to vacate the stipulation of dismissal which entered in February 2021. The Appeals Court in Reilly did no such thing, because the motion to vacate was not before it.

The Reilly decision concludes by stating that the "order denying the citizens' motion to intervene as moot is vacated, and the matter is remanded to the Land Court for further proceedings consistent with this opinion, including consideration of the citizens' motion to join the town's motion to vacate the stipulation of dismissal." 102 Mass. App. at 385. The Appeals Court did not issue any order directing this Court how to rule on the motion to vacate. See id. This Court must evaluate the entire procedural history of this case, the parties' submissions, and whether it has subject matter jurisdiction over the underlying claims, and then make a decision in the exercise of its own discretion as to whether the Interveners (and the Town) have met their heavy burden under Rule 60(b)(6) to vacate a judgment that entered almost three years ago. The Appeals Court did not divest this Court of its discretion.

Nor did (or could) the Superior Court divest this Court of its discretion or its power over its own judgments. However, that is what the Interveners advocate. They accuse this Court of an "error [which] lay in not respecting the Judgment of the Superior Court, its sister court, as clarified." Reply, p. 10. The Interveners' argument – that respect for the Superior Court judgment requires vacating this Court's judgment – is an impermissible collateral attack and an attack on the co-equal nature of the trial courts (two attacks the Interveners ostensibly deny making).

The Superior Court did not attempt to require this Court to vacate its own judgment because the Superior Court did not make any ruling with respect to the stipulation of dismissal. Its ruling was confined to whether the Town could expend funds to acquire property described in the

settlement agreement. However, even accepting arguendo the Interveners' claim that the entire settlement agreement is "ineffective," (which would require this Court to ignore the clear and unambiguous statements of the Superior Court to the contrary), it does not necessarily follow that the stipulation of dismissal also is ineffective.[2] A settlement "is not an order of the court; it is simply a contract between the parties. Tsironis v. Bismarck Hotel, No. 95-1731, 1996 U.S. App. LEXIS 1011, at *6 (7th Cir. Jan. 12, 1996). The order of the court is based on the stipulation of dismissal, which is not necessarily a "proxy" for a settlement agreement. See id. "Any purported invalidity or voidness in [a] settlement agreement…does not thereby render invalid or void the district court's judgment." Salem Pointe Capital, LLC v. Rarity Bay Partners, 854 F. App'x 688, 702-703 (6th Cir. 2021); see also Hetchkop v. Finest Carpet Workroom, 92 Civ. 4316 (PKL), 1995 U.S. Dist. LEXIS 18643, at *5 (S.D.N.Y. Dec. 13, 1995) (denying rule 60(b) motion where failure of performance under the parties' settlement agreement was not an extraordinary circumstance, "although perhaps unexpected").

Further confirming that the Superior Court did not usurp this Court's authority over its own judgments is the fact that the Superior Court judgment states that the "Town may (but is not required to) attempt to enforce the [o]ption." See Reilly, 102 Mass. App. at 374. (emphasis added). The Superior Court recognized that the Town would have to seek relief elsewhere (i.e., in the Land Court), and that it was not necessarily entitled to that relief. The Town followed the Superior Court's lead and attempted to enforce its purported option by returning to this Court and requesting vacatur in December 2021. This Court exercised its discretion to deny vacatur, which is a result that the Superior Court clearly anticipated as a possibility and could not prevent. Put simply, the Superior Court did not order this Court to vacate the dismissal, and nothing in the Superior Court

[2] And even if the stipulation of dismissal was ineffective, it does not necessarily follow that extraordinary circumstances exist warranting vacatur under Rule 60(b)(6).

judgment (or in Reilly) removes this Court's discretion to examine and decide the pending Rule 60(b) motions on the merits.

III. The Interveners Mischaracterize Key Portions of the Procedural History.

The Town indisputably abandoned its renewed "attempt to enforce the option" when it dismissed its appeal of this Court's denial of the initial motion to vacate. However, the Interveners make the rather remarkable claim at footnote 11 of their reply that "the Town's dismissal of its appeal is a nullity and does not have any res judicata effect." What makes this claim remarkable is the (unmentioned) fact that the Interveners appealed "the allowance of the Town of Hopedale's Motion for Voluntary Dismissal of Appeal issued on May 2, 2022." See Interveners' Amended Notice of Appeal (Docket Entry Dated May 9, 2022). The Interveners then filed a Civil Docketing Statement with the Appeals Court (attached as Addendum A) identifying the following issue on appeal:

> Did the Land Court err in granting the Town's Motion for Voluntary Dismissal of Appeal by treating it as a stipulated dismissal and denying the Hopedale Citizens the opportunity to oppose the motion?

The Interveners then briefed this question. However, the Appeals Court did not vacate or reverse the Town's dismissal of its appeal, and it most certainly did not declare the Town's dismissal to be a nullity. The Interveners just declare it so.

The above is not the only instance in which the Interveners simply decided that they prevailed on an issue and demand that this Court treat them as if they did. At footnote 5 of their reply, the Interveners attempt to cast aside the very clear comments by Judge Goodwin that the Superior Court did not invalidate, rule ineffective, or void the entire settlement agreement. They portray a question posed by Judge Goodwin – "What's going to happen if the appeal is unsuccessful?" – as if Judge Goodwin was asking about the Interveners' appeal of "the Land

Court's denial of the motion for injunction pending appeal." Id. The Interveners then say the hypothetical question is irrelevant because they "were successful in their appeal." Id. (emphasis in original). But Judge Goodwin unmistakably was asking about the Interveners' appeal of the Superior Court decision on Count II, not their appeal of this Court's denial of the motion to vacate. See Exhibit 8 to Keavany Aff., p. 22 ("THE COURT: So what we have is this Court's decision saying hey town, you can't spend the money to buy less property. And does that then mean that the railroad has it all? Has all the land and the town has none?"). Judge Goodwin then asked, "What's going to happen if the appeal is unsuccessful?" Id., p. 23. Counsel for the G&U Parties gave a lengthy answer concerning the outcome of the dispute if the Interveners were unsuccessful in their appeal of Count II. Id., pp. 23-24. It is absolutely disingenuous for the Interveners to suggest that this discussion pertained to anything other than their own appeal of Count II, just as it is for the Interveners to claim that they were successful in their appeal of that issue. The Appeals Court in Reilly affirmed the judgment which entered against the Interveners on Count II.

The Interveners go a step further in their attempt to run from the judgment of dismissal of Count II of the Superior Court case, and of the holding in Reilly affirming that dismissal for lack of standing. The Interveners now claim that Count II essentially was extraneous, and they only appealed it because:

> (1) the Railroad challenged the scope of the judgment on Count I and the Citizens sought appellate review to make clear the legal effect of Count I was that the Settlement Agreement is a nullity, which the Appeals Court did confirm; and (2) the Citizens had independent grounds to challenge the Settlement Agreement substantively[...]

Reply, p. 4, n. 6. This claim – that the Interveners appealed Count II to "make clear the legal effect of Count I" – is difficult to accept in the abstract. It is impossible to accept upon review of the record. First, the G&U Parties did not appeal Count I. If the Interveners believed there was a

dispute over the meaning of the judgment on Count I, they would have appealed Count I, not Count II. Second, the Interveners framed the issue on appeal of Count II as follows:

> Did the Superior Court err in dismissing for lack of standing under G.L. c. 40, § 53 and the doctrine of mandamus the Plaintiffs' request under Count II for a declaratory judgment that the Town of Hopedale's purported waiver under the Settlement Agreement of its exercised and recorded Right of First Refusal and Option to purchase 130 acres of Forestland under G.L. c. 61, § 8 was void and unenforceable, where (a) the Superior Court had ruled under Count I that the key consideration for the waiver--the putative acquisition under the Settlement Agreement of substantially less than all of the Forestland--was not authorized by Town Meeting as required by M.G.L. c. 40, §14;[…]

See Docketing Statement attached as Addendum B. Counsel for the Interveners explained in the May 3, 2022 hearing before Judge Goodwin that, if the Interveners were unsuccessful in their appeal of Count II:

> "I believe that the town under a new board would likely, with the citizens' support, file a third lawsuit to void the settlement for lack of consideration because that issue has not been squarely addressed by any court yet. So that's on the horizon. I hope we don't have to get there because the Appeals Court will rule that the **settlement agreement's waiver was ineffective** for one of the various reasons we've raised. But if we lose, that's what is going to happen.

Ex. 8, p. 27 (emphases added).

These excerpts confirm the Interveners' understanding that the judgment on Count I merely affected "the key consideration[3] for the waiver--the putative acquisition under the Settlement Agreement of substantially less than all of the Forestland," and that more was required in order to fully invalidate the settlement agreement: either a new lawsuit by the Town seeking rescission or a holding by the Appeals Court that "the settlement agreement's waiver was ineffective." Of course, the Town never filed a new lawsuit, and the Appeals Court explicitly found that the Interveners could not obtain relief declaring "the board's waiver of its c. 61 option as part of the

[3] There is no evidence before the Court that the land transfer was the "key consideration" for the settlement agreement.

settlement agreement was void, [or] that the town's c. 61 rights remain enforceable." Reilly, 102 Mass. App. at 378. Rather than acknowledge their prior statements and the Appeals Court's affirmance of Count II, the Interveners now claim that they got the relief they wanted under Count I from the beginning, and the appeal of Count II was effectively an academic exercise. This argument is belied by the record and should be rejected.

IV. Conclusion.

For the reasons set forth above, the Interveners' motion to vacate should be denied.

GRAFTON & UPTON RAILROAD COMPANY, JON DELLI PRISCOLI, AND MICHAEL MILANOSKI, as Trustees of the ONE HUNDRED FORTY REALTY TRUST

/s/ Andrew P. DiCenzo

Donald C. Keavany, Jr., BBO# 631216
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CERTIFICATE OF SERVICE

I hereby certify that this document eFiled on January 5, 2024 will be sent by separate email to all counsel of record.

/s/ Andrew P. DiCenzo

ADDENDUM A

MASSACHUSETTS APPEALS COURT
CIVIL DOCKETING STATEMENT

Appeals Court Docket Number **2022** -P- **0433**

Caption used in the lower court

Plaintiff(s): **TOWN OF HOPEDALE**

v.

Defendant(s): **JOHN DELLI PRISCOLI and MICHAEL R. MILANOSKI, as Trustees of the ONE HUNDRE**

1. Party Information

Name of the appellant(s) or cross-appellant(s) on whose behalf this statement is being filed:

Elizabeth Reilly, et al.

2. Attorney Information

Name **David E. Lurie** BBO# **542030**

☐ Or, check this box if you are self-represented and provide your name

3. Lower Court, Board or Agency Information

a. Court Department **Land Court**

b. Lower Court Docket Number(s) **20-misc-00467**

c. Specify the name and the role of each judge whose orders are at issue on appeal [not applicable for appeals directly from a board or agency]:

Judge, first and last name **Diane R. Rubin** Role **Entered Judgment**

Judge, first and last name Role

Judge, first and last name Role

d. Was the case or any information in the record designated as impounded in the lower court? (see Section 3) ☐ Yes ☑ No

In addition to providing the information below, parties filing a brief or record appendix that contains impounded materials must comply with Uniform Rule on Impoundment Procedure Rule 12(c), Supreme Judicial Court Rule 1:15 s. 2(c), and M.R.A.P. 16(d), 16(m), 18(a), and 18(g). If this case or any material therein is impounded, specify which documents are impounded and the authority for impoundment, e.g. court order, statute:

4. Nature of the Case

Select the most appropriate description, or enter description: **Government/Municipality**

5. Perfection of Appeal

a. Is the appeal from a final judgment, i.e., judgment disposing of all parties and claims? (•) Yes ( ) No

b. If no, identify the basis on which the interlocutory order is immediately appealable.

c. Docketing Date of Judgment or Interlocutory Order Appealed **May 2, 2022**

d. Date Notice of Appeal Filed **May 9, 2022**

Please provide information regarding the following post-judgment motions that may affect the timeliness of the notice of the appeal.

Type of Motion	Check if filed		Date Served (not date filed)
Motion for Judgment (Rule 50(b)) Notwithstanding the Verdict	( ) Yes	( ) No	
Motion to Amend or Make Additional Findings (Rule 52(b))	( ) Yes	( ) No	
Motion to Alter or Amend Judgment (Rule 59)	( ) Yes	( ) No	
Motion for Relief from Judgment (Rule 60)	(X) Yes	( ) No	1/25/22
Other (specify) Motion for Reconsideration	(X) Yes	( ) No	5/05/22

6. Appellate Issues

In cases other than child welfare appeals, please provide a short statement of the anticipated issues on appeal. If the appellate issue involves the interpretation of a particular statute or regulation, please provide a citation to that statute or regulation. (Note: This statement is for informational purposes only and failure to raise an issue here will not preclude an appellant from raising the issue in its brief.):

See attached Statement of Issues

7. Related Appeals

Are there any pending, past, or anticipated future appeals or original appellate proceedings that involve these parties or this case which have been entered in the Appeals Court or Supreme Judicial Court? (•) Yes ( ) No

Do you know of any pending or anticipated appeals raising related issues? (•) Yes ( ) No

If you answered yes to either question, provide the case name and docket number and describe below the related matter or issue:

Elizabeth Reilly, et al. v. Town of Hopedale, et al. Appeals Court Docket number 2022-P-0314 entered April 7, 2022 appealing Worcester Superior Court's order of Judgment on the Pleadings on Counts II and III; and the Court's Order on the Town of Hopedale's Motion for Clarification to the extent it sustained, altered, or modified the Court's dismissal of Plaintiff's Counts II and III.

Respectfully Submitted,

s/ **David E. Lurie**

Signature

Address

Lurie Friedman LLP
One McKinley Square
Boston, MA 02109

BBO Number

542030

CERTIFICATE OF SERVICE

Pursuant to Mass.R.A.P. 13(d), I hereby certify, under the penalties of perjury, that on this date of **May 18, 2022** I have made service of a copy of the Massachusetts Appeals Court Docketing Statement filed on behalf of

Elizabeth Reilly, et al. , upon the attorney of record for each party, or if the party has no attorney then I made service directly to the self-represented party, by ◯eFileMA.com ◯hand delivery ◯first class mail ◯e-mail to the following person(s) and at the following address(es). Note: Service may be made by e-mail only with the consent of each party or opposing counsel:

Peter R. Durning pdurning@mackieshea.com
Brian Riley briley@k-plaw.com
Donald Keavany dkeavany@chwmlaw.com
Harley Racer hracer@luriefriedman.com

/s/ David E. Lurie

Signature

617-367-1970

Telephone

Lurie Friedman LLP
One McKinley Square
Boston, MA 02109

Address

Attachment to Appeals Court Docketing Statement

for Town of Hopedale v. John Delli Priscoli et al., Land Ct. No. 20-misc-00467

ISSUES FOR APPEAL

1. Did the Land Court err in denying the Hopedale Citizens' Motion to Intervene, which sought in part to vacate the Town's Stipulation of Dismissal, where the sole basis for denial was mootness in light of the Court's denial of the Town's Motion to Vacate Stipulation of Dismissal, and where the denial of the Town's Motion was error because the lack of authorization of the Select Board to acquire property under c. 40, § 14 rendered the entire Settlement Agreement, on which the Stipulation was based, ultra vires, illegal and ineffective?

2. Did the Land Court err in denying the Hopedale Citizens' Motion for an Expedited Hearing on their Motion to Intervene to the extent it was based on lack of timeliness, where the Motion to Intervene was filed within eight (8) days of a scheduling conference on the issue and did not violate any rule or order of the Court?

3. Did the Land Court err in granting the Town's Motion for Voluntary Dismissal of Appeal by treating it as a stipulated dismissal and denying the Hopedale Citizens the opportunity to oppose the motion?

4. Did the Land Court err in denying the Hopedale Citizens' Motion for Reconsideration of (i) the granting of the Town's Motion for Voluntary Dismissal of Appeal and (ii) the denial of the Hopedale Citizens' Motion to Intervene, to the extent that the two rulings prevent the Hopedale Citizens from obtaining appellate review of the merits of the Land Court's denial of the Town's Motion to Vacate and the Hopedale Citizens' Joinder of that Motion?

ADDENDUM B

MASSACHUSETTS APPEALS COURT
CIVIL DOCKETING STATEMENT

Appeals Court Docket Number **2022-P-0314**

Caption used in the lower court

Plaintiff(s): **ELIZABETH REILLY, et al.**

v.

Defendant(s): **TOWN OF HOPEDALE et al.**

1. Party Information

Name of the appellant(s) or cross-appellant(s) on whose behalf this statement is being filed:

Elizabeth Reilly et al.

2. Attorney Information

Name **David E Lurie** BBO# **542030**

☐ Or, check this box if you are self-represented and provide your name

3. Lower Court, Board or Agency Information

a. Court Department **Superior**

b. Lower Court Docket Number(s) **2185cv0238**

c. Specify the name and the role of each judge whose orders are at issue on appeal [not applicable for appeals directly from a board or agency]:

Judge, first and last name **Karen Goodwin** Role **Entered Judgment**

Judge, first and last name Role

Judge, first and last name Role

d. Was the case or any information in the record designated as impounded in the lower court? (see Section 3) ☐ Yes ☑ No

In addition to providing the information below, parties filing a brief or record appendix that contains impounded materials must comply with Uniform Rule on Impoundment Procedure Rule 12(c), Supreme Judicial Court Rule 1:15 s. 2(c), and M.R.A.P. 16(d), 16(m), 18(a), and 18(g). If this case or any material therein is impounded, specify which documents are impounded and the authority for impoundment, e.g. court order, statute:

4. Nature of the Case

Select the most appropriate description, or enter description: **Government/Municipality**

5. Perfection of Appeal

a. Is the appeal from a final judgment, i.e., judgment disposing of all parties and claims? (•) Yes ( ) No

b. If no, identify the basis on which the interlocutory order is immediately appealable.

c. Docketing Date of Judgment or Interlocutory Order Appealed **Nov 10, 2021**

d. Date Notice of Appeal Filed **Dec 6, 2021**

Please provide information regarding the following post-judgment motions that may affect the timeliness of the notice of the appeal.

Type of Motion	Check if filed		Date Served (not date filed)
Motion for Judgment (Rule 50(b)) Notwithstanding the Verdict	( ) Yes	( ) No	
Motion to Amend or Make Additional Findings (Rule 52(b))	( ) Yes	( ) No	
Motion to Alter or Amend Judgment (Rule 59)	(•) Yes	( ) No	**Dec 1, 2021**
Motion for Relief from Judgment (Rule 60)	( ) Yes	( ) No	
Other (specify) _____	( ) Yes	( ) No	

6. Appellate Issues

In cases other than child welfare appeals, please provide a short statement of the anticipated issues on appeal. If the appellate issue involves the interpretation of a particular statute or regulation, please provide a citation to that statute or regulation. (Note: This statement is for informational purposes only and failure to raise an issue here will not preclude an appellant from raising the issue in its brief.):

See attached Statement of Issues

7. Related Appeals

Are there any pending, past, or anticipated future appeals or original appellate proceedings that involve these parties or this case which have been entered in the Appeals Court or Supreme Judicial Court? (•) Yes ( ) No

Do you know of any pending or anticipated appeals raising related issues? (•) Yes ( ) No

If you answered yes to either question, provide the case name and docket number and describe below the related matter or issue:

On April 19, 2022, Justice Desmond denied Motions to Stay pursuant to MRAP 6 (2022-J-0146) in connection with appeals of a related Land Court case (No. 20 MISC 000467 (DRR)). Notices of appeal have been filed in the Land Court in that case but the record has not yet been assembled and the appeal has not yet been docketed in the Appeals Court.

Respectfully Submitted,

David E Lurie

Signature

s/ David E. Lurie

Address

Lurie Friedman LLP
One McKinley Square
Boston, MA 02109

BBO Number

542030

CERTIFICATE OF SERVICE

Pursuant to Mass.R.A.P. 13(d), I hereby certify, under the penalties of perjury, that on this date of **April 20, 2022** I have made service of a copy of the Massachusetts Appeals Court Docketing Statement filed on behalf of

Elizabeth Reilly et al. , upon the attorney of record for each party, or if the party has no attorney then I made service directly to the self-represented party, by ◉ eFileMA.com ○ hand delivery ○ first class mail ○ e-mail to the following person(s) and at the following address(es). Note: Service may be made by e-mail only with the consent of each party or opposing counsel:

Brian Riley briley@k-plaw.com
Donald Keavany dkeavany@chwmlaw.com
Harley Racer hracer@luriefriedman.com

s/David E. Lurie

Signature

(617) 367-1970

Telephone

Lurie Friedman LLP
One McKinley Square
Boston, MA 02109

Address

Attachment to Appeals Court Docketing Statement

for Reilly v. Hopedale, Sup. Ct. No. 2185CV0238

ISSUES FOR APPEAL

1. Did the Superior Court err in dismissing for lack of standing under G.L. c. 40, § 53 and the doctrine of mandamus the Plaintiffs' request under Count II for a declaratory judgment that the Town of Hopedale's purported waiver under the Settlement Agreement of its exercised and recorded Right of First Refusal and Option to purchase 130 acres of Forestland under G.L. c. 61, § 8 was void and unenforceable, where (a) the Superior Court had ruled under Count I that the key consideration for the waiver--the putative acquisition under the Settlement Agreement of substantially less than all of the Forestland--was not authorized by Town Meeting as required by M.G.L. c. 40, §14; (b) there has been no Town Meeting vote approving the waiver, release or transfer of the Option—a recorded interest in municipal property--as required by M.G.L. c. 40, § 3; and (c) the transfer of the c. 61 Option to the Railroad is an assignment to a for-profit entity in violation of c. 61, § 8?
2. Did the Superior Court err in dismissing Count III, which sought injunctive relief to protect the Forestland as conservation land under G.L. c. 214, § 7A and Article 97 of the Massachusetts Constitution, where the Town of Hopedale had done everything necessary to acquire and protect the entire Forestland as conservation land, and where the exercised and recorded statutory Option under G.L. c. 61, § 8 constituted an interest in real property protected by the plain language of Article 97?