

**LURIE FRIEDMAN LLP**

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February 14, 2022

**BY EMAIL**

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Re: Appeal of Land Court Decision and Motion for Injunction Pending Appeal

Dear Attorneys Durning and Riley:

As representatives of at least ten taxpaying citizens of the Town of Hopedale (“Hopedale Citizens”)<sup>1</sup> in relation to the litigations of the Town of Hopedale regarding the M.G.L. c. 61 Forestland at 364 West Street in Hopedale, we were heartened to hear at the Board of Selectmen’s meeting on February 3, 2022 that the Board had voted to appeal the Land Court’s denial of the Town’s Motion to Vacate and to seek an injunction against land-clearing activities pending appeal and Special Town Meeting vote.

However, we are now greatly concerned to learn that the Railroad has proposed that the Board not move forward with that appeal and request for an injunction until the Special Town Meeting can vote because the land clearing activities that it proposes are “limited”. The Railroad’s stated intentions make the request for injunction even more urgent because the Railroad Defendants have now stated unequivocally that they will restart clearing the subject c. 61 Forestland imminently.

As indicated to the Superior Court, the Railroad Defendants intend to clear land and conduct site investigations for potential private well sources, including well-testing, test pits for stormwater management and road engineering, all to the benefit of the Railroad only, on the parcel of land that the Town was to purchase under the ineffective Settlement Agreement, Parcel A. The Railroad’s intended clearing is not “limited”, is not minor and would cause further irreparable harm. Allowance of this work, by not seeking an injunction now, is entirely

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<sup>1</sup> The Hopedale Citizens include, without limitation, Elizabeth Reilly, Carol J. Hall, Hilary Smith, David Smith, Donald Hall, Megan Fleming, Stephanie A. McCallum, Jason A. Beard, Amy Beard, Shannon W. Fleming, and Janice Doyle.

## **LURIE FRIEDMAN LLP**

Peter Durning, Esq.  
Brian Riley, Esq.  
February 14, 2022  
Page 2

contradictory to the Board filing its Motion to Vacate and its vote to appeal the denial of that motion. The Railroad seeks to carry out large scale destructive activities for its sole benefit and pursuant to the Settlement Agreement that the Superior Court has found is not effective and for which the Board has voted to seek appellate review.

The Railroad Defendants referred to an exhibit to the Settlement Agreement to indicate its scope of work. For clarity, it is attached hereto. The Railroad seeks to investigate three potential well locations. All three are on Parcel A, which the Town would acquire if the Town Meeting vote authorized that acquisition. To reach the potential well sites, the Railroad intends to clear access roads. The Board is well aware of the destruction caused by the Railroad's previous access road. While it is not clear where the new access roads would be built, there is no way for the roads to be constructed without clearing significant swaths of c. 61 Forestland that remain in dispute.

Worse, this irreparable harm to the Forestland would be for the sole benefit of the Railroad's development of a private water source. This would not be to the Town's benefit in any way. Even if the Town were to one day conduct exploration for future water sources in this property, that work should be done on the Town's terms, including with the input from the Water & Sewer Commissioners, the Conservation Commission and the Department of Environmental Protection.

As you know, the primary concern of the Water & Sewer Commissioners regarding the 364 West St. property is protection of the Town's current water supply. The Railroad's clear cutting the site, including in protected wetlands, is directly contrary to that current water source protection. At a minimum, the Board should seek input from the pertinent commissions and bodies before allowing any work to be done on the subject Forestland.

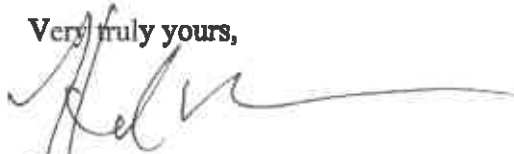
Furthermore, allowing this to proceed is entirely inconsistent with the Board's vote to move to vacate the dismissal, its vote to appeal the denial of that motion and its vote to seek injunctive relief pending appeal. This is exactly the type of work that must be enjoined, at least until the Town Meeting vote, or the entire effort is lost at the outset. The Board should not be acting as if the Settlement Agreement is effective while arguing to Courts that it is not.

We respectfully request the Board to do as it said it would – appeal the Land Court's order and seek an injunction pending Town Meeting vote and pending appeal. The Board cannot be party to further enforcement and action under the invalid Settlement Agreement.

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Peter Durning, Esq.  
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February 14, 2022  
Page 3

Very truly yours,

A handwritten signature in black ink, appearing to read "Harley C. Racer", with a long horizontal flourish extending to the right.

Harley C. Racer  
David E. Lurie

Enclosure

cc: Diana Schindler, Hopedale Town Administrator  
Town of Hopedale Board of Selectmen  
Client