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November 15, 2021

VIA EMAIL ONLY

Brian Riley, Esq.

KP Law

101 Arch Street, 12th Floor
Boston, MA 02110

RE: Elizabeth Reilly et al
VS: Town of Hopedale, et al
WOCV 2085CV00238D

Dear Brian:

I received a copy of a letter dated November 12, 2021 from Attorney Lurie to you regarding the Superior Court's November 10, 2021 decision in the above-captioned case. As you no doubt recognized, Attorney Lurie's letter is fraught with his typical gross mischaracterizations and baseless threats.

Only Attorney Lurie and his clients could interpret last week's decision and judgment as anything other than an overwhelming defeat. There is no dispute that the Superior Court categorically rejected the plaintiffs' claims on Counts II and Count III of the Complaint. All that is left standing is Count I which enjoins the Town of Hopedale from spending money to acquire the property that is described in the Settlement Agreement that was negotiated in the Land Court case, which was dismissed with prejudice in February 2021. As we have been saying since April, Count I goes no further than that. While we disagree with the Superior Court decision as it relates to Count I – let there be no mistake about what flows from the decision on Count I - the only option available to the Town of Hopedale is to do what Justice Meade hinted at in April – and that is for the Town of Hopedale to schedule a Special Town Meeting to appropriate a sum of money to acquire the property described in the Settlement Agreement.

As you know, Attorney Lurie's letter continues his habit of consistently and purposefully publishing misleading "interpretations" of decisions issued in this case, starting with the whopper that the Single Justice's April 2021 Decision ended the case in favor of the plaintiffs on all counts. As demonstrated by the trial court decision last week – Attorney Lurie was flat-out wrong in that regard. Attorney Lurie claimed that the subject property was forestland, even though it had never been owned by the Town. He was wrong about that. I understand his clients have engaged in this practice over the weekend, claiming victory in spite of the trial court's outright rejection of Counts

II and III of their Complaint, and the clear limitations of the judgment in Count I. This is very unfortunate as such unfounded and intentionally misleading proclamations as to the effect of the judgment that entered are likely to confuse town residents, which may have very grave consequences. It is incredible that these 10 taxpayers are telling residents they won the case, when in reality, their attempts to dictate how a Select Board governs were unquestionably rejected. The only fact they seem prepared to acknowledge is that the case is over.

With respect to Count II, Attorney Lurie claims that the Board “would violate their duties to the public” if it does not attempt to acquire all of the subject land. This is absolutely false, as Judge Goodwin decided (and Attorney Lurie had to begrudgingly acknowledge) that the decision to exercise a G.l. c. 61 option is within the sole discretion of the Board (and the Board has previously released and waived any such rights). It is also false for Attorney Lurie to claim that the Court “ma[de] clear that the Select Board now has the ability to proceed to acquire all 130 acres of Forestland...”. There is no ability of the Select Board to initiate steps to exercise a c. 61 right of first refusal that was dismissed with prejudice, waived, and released seven months ago. Attorneys Lurie knows that, and I expect he has advised his clients of that undisputed fact and reality.

Let me re-emphasize the last point in the preceding paragraph. The Town has no lawful means to take any step, or steps to acquire any land beyond the land described in the Settlement Agreement. Chapter 61 does not provide a legal basis, the October 2020 Special Town Meeting does not provide a legal basis, and Judge Goodwin’s decision does not provide a legal basis. Again, as last week’s decision and judgment make clear – the only party that could have brought such a claim was the Select Board and the Select Board did just that in October 2020 by filing a lawsuit in the Land Court, asserting these very same c. 61 rights. The lawsuit was defended, mediated, settled by vote of the Select Board, and dismissed with prejudice in February 2021. Whatever c. 61 rights the Select Board believed it possessed with respect to the land at issue in this case were waived and released in a fully enforceable Settlement Agreement that was negotiated with the assistance of former Land Court Justice Leon Lombardi in January 2021.

I try not to over-react to Attorney Lurie’s bluster, but his offer to represent the Town in future proceedings against the Railroad (after suing the Town in this action and in the 2018 lawsuit involving the Draper Mill URP), coupled with his threat to defeat any attempt by the Town to authorize acquisition of the portion of land subject to the Settlement Agreement, is troubling. Here Attorney Lurie seeks to impose his own will (or that of some of his clients) on the Select Board and the Town of Hopedale as a whole, and does so by attempting to force the Town into an all or nothing choice. Obviously, acquisition of significant acreage of the land in addition to other valuable consideration provided by the defendants is much better for the Town than acquisition of none of the land. But Attorney Lurie seeks to take that option off the table from the outset. How would that be effective, zealous representation of the Town? It clearly would not be. The misguided litigation brought by the ten taxpayers against the Town and my clients was doomed from the start due to lack of standing and had absolutely no chance of success. Unless, of course, success is defined not by prevailing in litigation but by requiring the Town to divert resources needed for education and public safety to defending such meritless claims.

Brian Riley, Esq.
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Attorney Lurie threatens the Town with further litigation in the form of an appeal if his clients' unrealistic, baseless and fanciful demands are not met. Attorney Lurie knows that the only Count that would be subject to any serious review on appeal would be Count I. I expect that if the plaintiffs were duped into filing an appeal of the judgment that entered on Counts II and III, the Town would be forced into cross-appealing the judgment that entered on Count I. A further appeal does not benefit the Town, or its residents.

In the unlikely event that these ten taxpayers and their supporters advocate against the approval of an Article (or Articles) at a Special Town Meeting to appropriate money to acquire the land (and accept donated land) described in the Settlement Agreement, and they are successful in that endeavor, as Justice Meade stated in his April 8 Decision, the Town will unfortunately end up with nothing – it will end up with no land. I hope and expect that the ten-taxpayers and their supporters understand and appreciate this undisputed reality. That is not an outcome that my clients want. It is time for the posturing, bullying and chest-pounding to end. As I am sure your clients have informed you, the settlement agreement that was executed in February was subject to intense negotiations and hard-bargaining by both sides. After the first mediation session concluded on January 8, it appeared unlikely that there would be a resolution. With the assistance of Judge Lombardi, the parties were able to get a deal done. No one got everything they wanted in that settlement agreement, but the agreement is fair and reasonable to both sides, and more importantly, it is fully enforceable. G&U and the Trust continue to act consistent with their obligations under the Settlement Agreement, and they look forward to the Special Town Meeting vote to authorize (or not authorize) an appropriation allowing the Town to acquire the property described therein.

Please share this letter with the Select Board. If you have any questions, please do not hesitate to contact me. Thank you.

Very truly yours

/s/ Donald C. Keavany, Jr.

Donald C. Keavany, Jr.

cc:

Ms. Diana Schindler, Hopedale Town Administrator (via email only)
Hopedale Conservation Commission
Hopedale Water and Sewer Commission
Hopedale Finance Committee
Clients