

GREEN, MILES, LIPTON & FITZ-GIBBON, LLP
ATTORNEYS AT LAW
77 PLEASANT STREET
POST OFFICE BOX 210
NORTHAMPTON, MASSACHUSETTS 01061-0210
(413) 586-8218
FAX (413) 584-6278

JOHN J. GREEN, JR.
HARRY L. MILES
ROGER P. LIPTON
JOHN H. FITZ-GIBBON
JOHN M. MCLAUGHLIN*
MICHAEL PILL
*ADMITTED ALSO IN CT

SUSAN L. MILES
JOANNE KUZMESKI-JACKSON
(GEOFFREY B. WHITE-RETIRED)
(BRIAN L. BLACKBURN-1951-2007)

June 4, 2011

Sent by U.S. Express Mail with return receipt requested and
via email attachment to jdevillars@bluewavestrategies.com

TO: Blue Wave Capital, LLC, Attn: John P. DeVillars, Manager & Registered Agent
Mailed to:
31 Milk Street, Suite 1104, Boston, MA 02109 and
137 Newbury Street, 7th floor, Boston, MA 02116

RE: Town of Amherst restricted "any future uses of the landfill site to active or passive
recreation."

Dear Mr. DeVillars:

This letter is written to insure that Blue Wave Capital, LLC ("Blue Wave") has actual knowledge of a "Special Condition" in Attachment C to the "Grant Agreement for a Landfill Capping Grant Between Commonwealth of Massachusetts Department of Environmental Quality Engineering Division of Solid Waste Management and Town of Amherst," Massachusetts. That condition states as follows:

II. Special Conditions

1.) The town will, within 6 months of signing this agreement and prior to submitting a request for final payment record at the appropriate registry of deeds, a deed restricting any future uses of the landfill site to active or passive recreation. The terms of which must be accepted by the Department prior to actually recording the instrument.

The Town of Amherst represented that this would be done in a letter dated October 25, 2004 from Guilford B. Mooring II, P.E., as Superintendent of Public Works for the Town of Amherst, to Larry Hanson, Solid Waste Management Section, Department of Environmental Protection, Western Regional Office. That letter states as follows:

The complete grant agreement, with the then Office of Environmental Affairs, for funding the capping of this landfill is enclosed. A review of the grant finds that the Town has not completed all the requirements of the grant. Specifically the deed restriction for the property has not been filed. There are also other technical

requirements for testing in the grant that may not have been completed. The part of the grant that has been completed is the capping of the landfill in accordance with the then approved plan. Although the Town has not completed the requirements of this grant we are interested in resolving this issue and completing the relevant items of the agreement to verify the landfill impact and to reach specific end uses of the site.

A copy of the documentation quoted above will be provided upon request, although Amherst town officials should have disclosed this issue to Blue Wave and provided this documentation as a matter of course.

My clients, who live on Tanglewood Road and Wildflower Drive in Amherst, next to the old landfill, respectfully submit that Blue Wave's proposed use of this dedicated recreational park land violates the restriction and is therefore illegal. This land is a public trust, already dedicated to a specific public purpose (e.g., recreational park land).

Generating electricity from the sun is a worthwhile endeavor, which my clients and I support. But the permanent preservation of land for public purposes such as recreation, conservation, affordable housing, watershed protection, and agriculture cannot be ignored. Yet, that appears to be what Blue Wave and the Town of Amherst are trying to do.

If you disagree, I respectfully request that you respond in writing, explaining your position and providing citations to any supporting legal authority.

If you do not respond within fourteen (14) days from the date of this letter, I will assume you agree that the proposed use of this recreational park land for a solar energy installation is illegal. If you require additional time to respond, please let me know a reasonable date certain by which you can provide a substantive response. A prompt substantive response will be greatly appreciated.

Very truly yours,

Michael Pill

Copies (via first class U.S. mail):

Amherst Select Board, 4 Boltwood Ave., Amherst, MA 01002

John Musante, Amherst Town Manager, 4 Boltwood Ave., Amherst, MA 01002

Guilford Mooring, P.E., Supt. of Public Works, 685 S. Pleasant St., Amherst, MA 01002

Copies via email attachment:

Clients