MEMORANDUM

To: John Elsesser, Coventry Town Manager
From: Kenneth R. Slater, Jr., Esq.
Date: February 14, 2020
Re: Acquisition of Stewart Property
    Our File No. 17996.0072

I. OVERVIEW

For the purposes of the Council’s evaluation of the proposed real estate transaction with the estate of Lance Stewart, I am writing to briefly outline the history leading to the recent negotiations and outlining the terms of a possible agreement with the estate of Lance Stewart.

If the terms outlined below are acceptable, it is our recommendation that a purchase and sale agreement be prepared at this time and executed by you containing the contingency that all necessary municipal approvals associated with the acquisition of the land are obtained. The agreement would terminate if those approvals are not obtained. Its advantage would be to bind the seller and put an end to the frequent changes in position that have plagued prior negotiations with Scott Stewart, the executor of the estate.

II. PRIOR HISTORY

Lance Stewart entered into agreements with the Town regarding remediation of blighted conditions of his property. After he breached a contract, extensive efforts were
undertaken to work with him to remediate the property including a possible agreement that the Town undertake remedial work in exchange for a transfer of a portion of his property. While we were very close to reaching a proposed deal on more than one occasion that would avoid our proceeding with litigation, he would repeatedly back away from the agreement forcing the Town to proceed with the litigation. One of the sticking points that prevented an agreement at that time was their resistance to convey land free of restrictions as to how the Town could use it, especially to avoid it being used as a transfer station.

Unable to reach an agreement, we successfully obtained a court order requiring that Lance Stewart undertake the work by a date certain and an order that the Town could proceed in undertaking the remediation in the event that Stewart failed. Stewart failed to undertake the remediation resulting in the Town proceeding to do the remediation followed by filing papers with the court to obtain a money judgment against Stewart to compensate the Town for its remedial efforts. A judgment lien in the amount of $43,405.18 was recorded on the land records on or about September 17, 2019. It is accumulating statutory interest while the judgment remains unpaid.

III. RECENT NEGOTIATIONS

Through your efforts the following terms were negotiated and acceptable to Stewart, subject to probate approval:

1. The purchase and sale of a portion of the property, together with certain easements in favor of Stewart and in favor of the Town as shown on the attached figure which includes the following:
   a. A 4.51-acre parcel labeled on the plan as “DPW” area would be acquired by the Town and would have no restrictions as to its use and could include a transfer station or any other improvement for which the Town wishes to use it.
   b. The Town would acquire 7.0 acres of land that will be protected as open space as shown on the plan.
c. Easements would be granted to Stewart and to the Town to enable access over the respective properties as shown on the plan including:

i. A pedestrian access in favor of the Town allowing persons to travel from the Town’s 7.0-acre open space over Stewart’s land to reach the state forest located south of the Stewart property;

ii. An easement enabling Stewart to travel through the open space property to reach the 4.5-acre parcel being acquired by the Town; and,

iii. A pedestrian access easement from a proposed future cul-de-sac adjoining the Stewart property along the edge of the Stewart property to the 4.51 acres to be acquired by the Town.

2. The consideration for the transaction would be:

i. A release of the existing $43,405.18 judgment lien and any accrued interest;

ii. The Town’s payment of $49,000;

iii. Any unpaid taxes related to the two parcels being acquired by the Town; and,

iv. The remaining Stewart property would no longer qualify as P.A. 490 forest because of its reduction in acreage. If permissible by law, any P.A. 490 penalty associated with the transaction would be waived.

IV. RECOMMENDATION

From our perspective the agreement has a number of benefits to the Town. But that would have to be decided by Town in the ordinary course of approvals of any real estate acquisition. In order to bind Stewart, subject to approval of the probate court, we recommend that it be placed under contract now with the contingency that all municipal approvals must be obtained. If in that process the Town decides that this purchase and sale should not take place, that contract would terminate with no further responsibilities to either side.