

**From:** [Preserve Hopedale](#)  
**To:** [Glenda Hazard](#); [Brian Keyes](#); [Bernie Stock](#)  
**Cc:** [Hopedale Zoning Board](#); [Diana Schindler](#)  
**Subject:** Rosenfeld vs. Town of Hopedale  
**Date:** Sunday, November 13, 2022 5:44:42 PM

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Dear Select Board,

We are writing to respectfully request that the town appeal the court's default judgment on the matter of *Rosenfeld Concrete Corp. v. Town of Hopedale* for which no town counsel was originally sent to defend.

Understanding that an appeal may only be submitted if there was an error in the findings, we specifically point out that in the ruling, item # 1 indicates the following:

That warehouses are a by-right use in the Light Industrial [correct] and Ground Water Protection [incorrect] zoning districts in the Town.

Zoning by-law 17.2 notes that "The Groundwater Protection District is an overlay district superimposed on the zoning districts. This overlay district shall apply to **all new construction** reconstruction, or expansion of existing buildings and new or expanded uses. **Applicable activities or uses in one portion of the underlying zoning districts which fall within the Groundwater Protection District must additionally comply with the requirements of this district.** Uses that are prohibited in the underlying zoning districts shall not be permitted in the Groundwater Protection District."

Thereafter, 17.6(a) lists all permitted uses, **where neither a Warehouse, nor Distribution Center are listed.**

Therefore, the finding in the court's ruling (#1) stating that warehouses are by-right in the Ground Water Protection district is legally incorrect.

What town board is responsible for upholding this? Surely this should not fall on residents to pursue, appeal, and/or litigate when our bylaws are already in place to address these issues.

Additionally, while not specific to the court ruling itself, another important distinction is that the intended use of the proposed Warehouse and Distribution Center is commercial, based on M.G.L. Chapter 59 §2A, which outlines Commercial vs Industrial land uses (see 316 and 401) -

<https://www.mass.gov/files/documents/2016/08/wr/classificationcodebook.pdf>

Industrial – Code 4 - All real property used or held for use for manufacturing, milling, converting, producing, processing, extracting or fabricating materials unserviceable in their natural state to create commercial products or materials; the mechanical, chemical or electronic transformation of property into new products and any use that is identical to or an integral part of such use, whether for profit or non-profit purposes; property used or held for uses for the storage, transmitting and generating of utilities.

401..... Warehouses for storage of manufactured products

Commercial - All real property used or held for use for business purposes and not specifically included in another class, including but not limited to any commercial, business, retail, trade, service, recreational, agricultural, artistic, sporting, fraternal, governmental, educational, medical or religious enterprise for non-profit purposes.

316..... Other Storage, Warehouse and Distribution facilities

At the 11/3/21 Planning Board meeting, William Buckley states that "this warehouse would attract a large warehouse distribution center moving consumer products to smaller retail or wholesale stores".

We would like to request that you and your board watch the 1/7/21 Planning Board Meeting from

the town of Holliston regarding a similar proposal that was ultimately denied. (starting at the 1 hour 17 minute mark - for about 15 minutes) <https://www.townofholliston.us/planning-board/events/106691>

While some of the details are different, their town attorney (Jason Talerman, ironically the same attorney now employed by GFI arguing the opposite), carefully lays out that a General Warehouse has a much different use/intensity than a distribution center. Similar to the 75 Plain St proposed Warehouse and Distribution Center, the applicant is stating (and using the land use code to drive traffic generation studies) that their building will be a General Warehouse and continually states that it is an allowed use in the Hopedale LI zone. However, based upon ITE descriptions and classifications, a general warehouse use would generally be less than 200,000 sq feet of building, would have a maximum of 40 loading dock spaces and be only on one side of the building. At more than double 200,000 sq feet, 300 parking spaces, 139 loading docks on multiple sides of the building - and given that GFI has applied for a Warehouse AND Distribution Center - there's a massive disconnect. To quote Attorney Talerman: "That's big! That's intense! That's for a high cube or an e-commerce facility."

Our position continues to be that this project is a Distribution Center (as noted on the applicant's original application) and is not an allowed use under the intensity regulation (section 11) of our zoning bylaws -- the use is intended to be commercial in nature and therefore a non-conforming use in a Light Industrial zone, which then also triggers by-law 4.5, the requirement of a special permit for a change in use from one non-conforming use to another.

It seems, if left as-is, there may be future consequences of not defending the town's rights to interpret its own by-laws. More specifically in this case, letting a large developer push their desires to a judge and request interpretation, without any town representation, could set a precedent that the town has less control over vetting development on its Groundwater Protection District - which could ultimately come to affect other sensitive areas of town.

Respectfully,

The Preserve Hopedale Team

October 31, 2022

**Via Email**

Hopedale Select Board

78 Hopedale Street

Hopedale, MA 01747

Glenda Hazard – Chair, Bernard Stock – Select Board Member

Cc Diana Schindler, Town Administrator

**Re: Select Board Member Keyes Complaint, Open Meeting 10-24-2022 & potential litigation**

Ms. Hazard,

I write this letter to you in response to the proceedings that took place this past Select Board Meeting on 10/24/2022 in Open Session. During the meeting, approximately 53 minutes into the open session for your reference, in the discussion of acceptance of the resignation of our Town Administrator, Diana Schindler, you proceeded to make a direct and blatant statement and accusation against me that I find to be not only wildly inappropriate and unprofessional, but also slanderous and defamatory in nature.

I take offense to your recent action and find it to be unsubstantiated in any way. The statement goes way beyond the boundaries of the Select Board but more importantly disparages my character and professional brand in the private sector as well. This was completely irresponsible and your obvious dislike or hatred towards me, along with the conflicting position and beliefs I hold in regard to the issues in Town, fueled you to make such a reckless statement during a recorded Open Meeting. Here is your statement for the record:

*For my part, I can't help but want to thank Brian Keyes and the band of persistent past and present Town Officials who have successfully created a "hostile work environment" for the Town Administrator and want to thank them for impeding our efforts to attract a future Town Administrator because I am sure any candidate that "Googles" Hopedale would then run in the other direction.*

This careless statement is not based on a single shred of evidence and fabricated to your own liking. There has been at no time in the past a time when Diana had a conversation with me, as Chair, saying she felt she was working in a hostile work environment at all, nor is there any record of a complaint being filed with the Select Board or our Town Counsel KP Law. Furthermore, there is also not a single reference to Diana enduring a "hostile work environment" in her own written resignation letter presented to the Select Board that you read in public.

I had a meeting with two attorneys from our Town Counsel at KP Law this past Friday to explain the situation and get some guidance. They, Brian Riley and Tim Zessin, recommended that I file a complaint with you, and you are welcome to put it on a future agenda as an Executive Session item if you wish to discuss as a Board. I have also been cleared for any Open Meeting Law violation as they said this direct correspondence to you and the Board members, and Town Administrator is appropriate. I have also informed them that in the coming weeks I will be consulting a personal attorney to evaluate my options of litigation against either you directly or against the Town of Hopedale/You as Madam Chair of the Select Board.

Your actions and statement about me need to be held accountable. It is not right that you can be inspired by your own emotion and bias and then proceed to attack my character and professional reputation in the way you chose to do it.

Respectfully,

Brian Keyes

Select Board Member, Town of Hopedale



Phone (508) 653 8007  
Fax (508) 653 8194



33 West Central Street  
Natick MA 01760-4503

November 4, 2022

Diana Schindler  
Town Administrator  
78 Hopedale Street  
P.O. Box 7  
Hopedale, MA 01747

Town of Hopedale

NOV 08 2022

Board of Selectmen

Re: Notice of Availability of Report  
Permanent Solution with No Conditions Statement  
7 Fitzgerald Drive  
RTN #2-21624

To Whom It May Concern;

This letter is to inform you of the availability of a Permanent Solution with No Conditions Statement submitted by Hopedale Properties, LLC, Series M for the property located at 7 Fitzgerald Drive in Hopedale, MA (the Site). You may access a copy of the reports filed with MassDEP by entering the RTN at [http://public.dep.state.ma.us/wsc\\_viewer/](http://public.dep.state.ma.us/wsc_viewer/).

The Site is a commercial property with a slab-on-grade garage near the southern end of the former Draper Corporation factory complex in Hopedale. On March 9, 2021, an oily sheen was encountered in an excavation during replacement of a fire hydrant at 7 Fitzgerald Drive. Reportedly, water within the fire hydrant pipe spilled out into the excavation when the pipe was cut, and oil material that was already present in the soil created an oily sheen on the water. MassDEP Bureau of Waste Site Cleanup Central Regional Office (BWSC CRO) was notified of the possible reportable release and informed the contractor that the condition was not a 2-hour or 72-hour reportable condition, but there may be a 120-day reportable condition depending on whether soil laboratory results exceeded applicable RCS-1 reportable concentrations.

The oily water was removed from the excavation via vacuum and disposed as hazardous waste. Soil samples were collected from the excavation and submitted for laboratory analysis of Extractable Petroleum Hydrocarbons (EPH). Results later showed detections of C11-C22 aromatic hydrocarbons, C19-C36 aliphatic hydrocarbons, benzo(a)pyrene, and dibenzo(a,h)anthracene greater than applicable RCS-1 reportable concentrations. The RCS-1 is applicable because the Site is within the boundaries of a groundwater resource area categorized as RCGW-1 (Zone II Current Drinking Water Source Area) per 310 CMR 40.0361. The release was reported with a BWSC-103 Release Notification form on July 1, 2021 and assigned RTN #2-21624.

Follow-up soil and groundwater sampling was carried out in May 2022 around the excavation area. Soil results show that oil impact is present at low levels within the northeastern area of 7 Fitzgerald Drive. Lead and polycyclic aromatic hydrocarbons (PAHs) were also detected.

Groundwater sampling results in two rounds show trace detections of several metals and PAHs below the applicable GW-1 groundwater standards which are intended to be protective for drinking water. No petroleum hydrocarbon fractions were detected in groundwater with detection limits at or below applicable standards. Surface water sampling in the Mill River downgradient of the Disposal Site showed no evidence of oil or hazardous material discharging from the Site into surface water.

An MCP Method 1 Risk Characterization finds that Residual concentrations of oil and hazardous material pose No Significant Risk for unrestricted future use, including single family residential use. The Disposal Site is being closed with a Permanent Solution with No Conditions.

If you have any questions regarding this report please contact our office.

Very truly yours,

IRWIN Engineers, Inc.



J. Andrew Irwin, PE, LSP  
President

cc: Carol Villa – Secretary, Board of Health, Town of Hopedale  
Philip Shwachman – President, First American Realty, Inc.