

# Christopher, Hays, Wojcik & Mavricos, LLP

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STUART A. HAMMER 1943-2021

July 6, 2022

## VIA EMAIL (openmeeting@state.ma.us)

Division of Open Government  
Office of the Attorney General  
Commonwealth of Massachusetts  
One Ashburton Place

Re: *Open Meeting Law Violations  
Town of Hopedale  
Selectboard  
June 21, 2022 Meeting*

Dear Sir/Madam:

I represent Grafton & Upton Railroad Company (G&U) and One Hundred Forty Realty Trust, a Massachusetts nominee trust. G&U owns 100% of the beneficial interest in the Trust. The Trust is the record owner of title to property located at 364 West Street, Hopedale, MA, a 155-acre+- parcel located within Hopedale's Industrial Use Zone. On Thursday afternoon, June 16, 2022, the Selectboard published an Agenda for its June 21, 2022 meeting. A true and accurate copy of the June 21 Agenda is attached hereto as Exhibit 1. The agenda stated that the Board intended to go into Executive Session on June 21, *inter alia*, to:

- **“consider the acquisition of real property if the chair declares that an open meeting may have a detrimental effect on the negotiation negotiating position of the public body”;**

On June 21, I sent a letter (attached as Exhibit 2) to the Board informing the Board that its Executive Session agenda as it relates to the consideration of acquiring real property was not compliant with the Massachusetts Open Meeting Law. Specifically, I informed the Board that the Meeting Agenda did not describe the real property that was expected to be considered for acquisition. Additionally, the exception to the Open Meeting Law cited by the Board (G.L.c. 30A §21(a)(6)), did not apply because there was no known negotiation pending or contemplated and further, if an eminent domain taking was being considered, the “negotiation” exception would not apply because there is no negotiating involved in an eminent domain taking. Because of the clear violations of the Open Meeting Law as it related to the anticipated agenda item to consider the acquisition of real property, I requested that the Board remove that agenda item until it complied with the Open Meeting Law. The Board ignored my request and rather than remove the offending item from the Executive Session Agenda, the Board announced for the first time that it was intending to discussing the acquisition of 364 West Street, the 155-acre industrially zone parcel owned by the Trust/G&U at its Executive Session. The Board then immediately went into Executive Session and returned to Open Session

*Westborough Office: 45 Lyman Street - Tel: (508)986-9430*

approximately two hours later to announce that it voted to open a Warrant for a Special Town Meeting on July 11 (in less than three weeks) with one article – an article to authorize the Town to take 364 West Street by eminent domain. The Board then voted to close the Warrant and proceeded to schedule Special Town Meeting to consider the article to acquire 364 West Street for July 11 – less than three weeks from its June 21 Meeting when it announced for the first time its intention to take land owned and controlled by G&U by eminent domain. Upon information and belief, the Town has not retained an appraiser to determine the fair market value (highest and best use) of the 364 West Street Industrially-zoned land. Certainly, there have been no appraisers who have requested permission to walk the property as part of an appraisal process. At its June 27 Meeting, the Board was asked by a resident to postpone the July 11 Special Town Meeting in light of the lack of an appraisal of the 364 West Street property. In response, the Select Board Chair repeatedly stated that the Special Town Meeting was going forward on July 11 without stating why the Board was proceeding with an eminent domain taking of 155 acres of industrially zoned land at an unprecedented pace without an appraisal. The Chair's statements regarding pressing forward with the July 11 Special Town Meeting are found at timestamp 2:33:00 - 2:36:00 of the June 27 Meeting, which can be found here: [https://townhallstreams.com/stream.php?location\\_id=56&id=46258](https://townhallstreams.com/stream.php?location_id=56&id=46258)

On July 1, 2022, an Agenda was posted for the Board's July 6 meeting (attached as Exhibit 3), which includes another cryptic and vague description of an item related to the Town's apparent attempt to take 364 West Street from the G&U under "Old Business":

3. Update re: Special Town Meeting and Property Appraisal

I realize that Open Meeting Law Complaints typically begin with a Complaint filed with the Board being accused of violating the law and that the local Board has 14 business days to respond before the Division of Open Government is presented with the Complaint. However, in this case, the 14 business days would not expire until after July 11, the date of the currently scheduled Special Town Meeting to vote on taking the G&U's land by eminent domain. In other words, it would be too late. The Hopedale Selectboard must be advised immediately that its June 21 Agenda was defective and violative of the Open Meeting Law as it relates to the discussion of taking 364 West Street from G&U and the Trust by eminent domain and that accordingly any votes taken at the July 11 Special Town Meeting will be null and void.

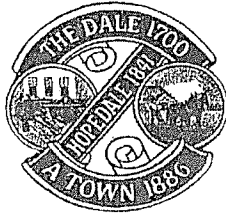
I am available to answer any questions the Division may have with respect to this matter.

Very truly yours,

/s/ Donald C. Keavany, Jr.

cc: Brian Riley, Esq. ([BRiley@k-plaw.com](mailto:BRiley@k-plaw.com))  
David Mackey, Esq. ([dmackey@andersonkreiger.com](mailto:dmackey@andersonkreiger.com))  
Andrew P. DiCenzo, Esq.  
Ms. Glenda Hazard, Selectboard Chair  
Mr. Brian Keyes, Selectboard  
Mr. Bernard Stock, Selectboard  
Ms. Diana Schindler, Town Administrator  
Ms. Lisa M. Pedroli, Town Clerk  
Client

# **EXHIBIT 1**



**Town of Hopedale**  
78 Hopedale Street, PO Box 7  
Hopedale, MA 01747  
P. 508.634.2203  
Hopedale-ma.gov

**Select Board**  
Brian R. Keyes, Chair  
Louis J. Arcudi, III  
Glenda A. Hazard

**Town Administrator**  
Diana Schindler

**Select Board**  
**Meeting Agenda**  
**REMOTE MEETING ONLY**  
**June 21, 2022**  
**7:00 PM**

On June 16, 2021, Governor Baker signed into law An Act Extending Certain COVID-19 Measures Adopted During the State of Emergency.<sup>1</sup> This meeting will be held via REMOTE means only.

If you wish to speak, please reserve comments until the Public Comment section of the meeting. If you are using video, you may either raise your hand to be acknowledged by the Chair or use the "Raise Your Hand" button. Please wait to speak until you are acknowledged by Chair. If participants cannot conduct themselves in accordance with these guidelines, they will be removed from meeting.

Also Streamed Live, click here: [https://townhallstreams.com/towns/hopedale\\_ma](https://townhallstreams.com/towns/hopedale_ma)

**Join Zoom Meeting**

<https://us02web.zoom.us/j/81873864755?pwd=NU1U1Y2dXJXNnBqU0hGRm5RODU0QT09>

**Meeting ID: 818 7386 4755**

**Passcode: 746557**

**Call to order 7:00 p.m.**

**RECEIVED**

**By Lisa M. Pedrolini at 3:34 pm, Jun 16, 2022**

A. Executive Session:

Motion: To move into Executive Session, pursuant to M.G.L. c.30A, § 21(a) for purpose # (3) (To discuss strategy with respect to litigation that an open meeting may have a detrimental effect on the litigation position of the public body if the chair so declares and purpose #(6) (To consider the acquisition of real property if the chair declares that an open meeting may have a detrimental effect on the negotiating position of the public body); Roll Call Vote. Purpose: Litigation strategy re: Town v. Jon Delli Priscoli, Trustee of the One Hundred Forty Realty Trust, et als, and other related matters. Attorneys Mina Makarious and David Mackey present.

**Board will return to Open Session immediately following.**

B. New Business

1. Call for Special Town Meeting and Sign Warrant.

*Please note the Select Board agenda may be subject to change and items not anticipated may be discussed. All listed agenda items may be subject to a vote.*

<sup>1</sup> This Act includes an extension, until July 15, 2022, of the remote meeting provisions of his March 12, 2020, Executive Order Suspending Certain Provisions of the Open Meeting Law. Section (1) of the executive order allowing public access through adequate, alternative means is independent from Section (2), which allows members of the public body to participate remotely. The public body may conduct its proceedings under the relief provided in section (1) or (2) or both.

# **EXHIBIT 2**

# Christopher, Hays, Wojcik & Mavricos, LLP

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WILLIAM W. HAYS - Retired  
WILLIAM C. PERRIN, JR. 1947-1997  
STUART A. HAMMER 1943-2021

June 21, 2022

Ms. Glenda Hazard, Chair  
Hopedale Select Board  
78 Hopedale Street  
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[ghazard@hopedale-ma.gov](mailto:ghazard@hopedale-ma.gov)

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[bkeyes@hopedale-ma.gov](mailto:bkeyes@hopedale-ma.gov)

Mr. Bernard Stock  
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78 Hopedale Street  
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Hopedale, MA 01747  
[bstock@hopedale-ma.gov](mailto:bstock@hopedale-ma.gov)

RE: Open Meeting Law Violations

- June 21 Select Board Meeting
- May 23 Select Board Meeting

Dear Members of the Select Board and Town Administrator:

As you know, I represent the Grafton & Upton Railroad Company (“G&U”). I write to notify you that the actions which the Hopedale Select Board contemplate taking at its meeting of June 21 2022, as well as actions which it has purportedly already taken at meeting of May 23, 2022, are in gross violation of the Massachusetts Conflict of Interest Law, (G.L. c. 268A), and the Open Meeting Law, (G.L.c.30 A). A formal Complaint is attached hereto, and the violations are detailed below.

## The Contemplated Executive Session of June 21 2022

The agenda for the Board’s meeting of June 21 2022 states that the Board intends to go into Executive Session, inter alia, to:

- “discuss to discuss strategy with respect to litigation that an open meeting may have a detrimental effect on the litigation position of the public body”;
- “consider the acquisition of real property if the chair declares that an open meeting may have a detrimental effect on the negotiation negotiating position of the public body”; and
- have a “roll call vote... Litigation strategy re: Town v. Jon Delli Priscoli, Trustee of One Hundred Forty Realty Trust et als, and other related matters.”

The Board's Agenda states that Attorneys Mina Makarious and David Mackey will be present for the Executive Session.

Based on the June 21 Meeting Agenda, the Board appears intent on invoking two exceptions to the Open Meeting Law – the litigation exception (G.L.c 30A §21(a)(3)) and the purchase of real property exception G.L.c 30A §21(a)(6)) to discuss the items identified above in Executive Session. I am confident that town counsel will confirm for you that the litigation exception to the Open Meeting Law applies only to discussions with respect to strategy concerning pending litigation, or litigation which is imminent. See, G.L.c. 30A §21(a)(3). The Meeting Agenda purports to identify 2 separate litigation matters that will be discussed at the Executive Session. However, the posted Meeting Agenda does not permit the public to know if the first litigation item the Board intends to discuss is “pending”, or is “imminent.” There is simply a vague reference to “litigation”. And with respect to the second litigation item the Board intends to discuss, as the Board is aware, presently, there is no litigation pending between the Town of Hopedale and G&U. The specific litigation matter referenced in the Meeting Agenda is the Land Court case commenced by the Town in October 2020 which has finally concluded when the pending appeal was dismissed by the Town. Hence, the Town has no “litigation position” in the Land Court case. While 10 Taxpayers have an appeal pending with respect to the denial of their Motion to Intervene, that distinct, non-merits based appellate issue does not affect the non-existent “litigation position” of the Town in that Land Court case. Simply put, there is no pending litigation between the Town and G&U and furthermore, there is no imminently threatened litigation between G&U and the Town.

It appears that the Select Board is intending to discuss the availability and advisability of filing some type of new litigation against the G&U at its Executive Session this evening, as the Meeting Agenda references “other related matters” in the context of allegedly discussing the dismissed Land Court case. What does the Select Board mean when it states that it intends to discuss “other related matters.”? What “other related matters” does the Board intend to discuss in its Executive Session? Neither discussing the advisability of filing a new lawsuit against the G&U (or any party), nor discussing concluded litigation brings into play an exception to the Open Meeting Law under G.L.c. 30A §21(a)(3). It appears rather obvious that the true purpose of this meeting is to discuss whether it makes sense for the Select Board, on behalf of the Town of Hopedale, to file a new lawsuit, and not to discuss any strategy with respect to pending or imminent litigation against the Town. Discussion by the Select Board with respect to the advisability of filing a new lawsuit on behalf of the Town does not give rise to an exception to the Open Meeting Law which authorizes the Board to go into an Executive Session.

Additionally, the second purported reason for the Executive Session (to consider the acquisition of real property) is an obvious sham. Initially, the Meeting Agenda does not describe the real property that is being discussed. Moreover, this exception would apply only if discussion in open session would have a detrimental effect on the negotiating position of the public body. But here, there is no known negotiation pending or contemplated, and moreover, it is impossible to know the real property which the Board plans to discuss acquiring from the Meeting Agenda. For sure, the property owned and/or controlled by the G&U is not for sale to the Town. Moreover, the Town cannot acquire real property owned and /or controlled by the G&U by eminent domain. A town has no statutory authority to take property from a railroad, and even if it did, any such statute would be preempted by federal law. Furthermore, even if the Town had authority to acquire the property by eminent domain, the Open Meeting Law exception cited in the Meeting Agenda (G.L.c. 30A §21(a)(6)) would not apply, since there is no

negotiating involved in an eminent domain taking. As you are well aware in an eminent domain taking, the pro tanto price is set by an appraisal subject to the dispute in litigation by the property owner. For these reasons, G.L.c. 30A §21(a)(6) does not apply to the June 21 Agenda item regarding “the acquisition of real property”, regardless of any chair declaration.

It is obvious that the stated reasons for the June 21,2022 Executive Session are shams. In truth, the Board of seeks to hide from public view discussions which they intend to have concerning the costs, risks and benefits of commencing new litigation against the G&U and to also hide from public view discussions concerning other strategies to attempt to acquire G&U property which was at issue in the dismissed and concluded Land Court litigation. These discussions which the Board intends to have must be had in an open public meeting, and are not subject to any of the Executive Session exceptions to the Open Meeting Law.

#### Meeting of a May 23, 2022

The Agenda for the May 23, 2022 Board meeting included the following two agenda items under “Old Business”:

4. “Update re: GU RR Request for Support of IRAP Grant”; and
5. “Update re: 364 West Street.”

These Agenda Items were intentionally vague and misleading. The Board did not update the public with respect to the IRAP Grant and 364 West Street at the May 23 Meeting. To the contrary, the Board used the cover of an “update” to vote on two substantive motions that were not properly noticed to the public. On a motion by Mr. Stock, the Board voted 2-1 to send a letter to the MA Department of Transportation that had the effect of rescinding the Board’s prior vote of support of the IRAP grant application. This is not an update. This vote resulted in a complete reversal of the Board’s position from three weeks prior. The Board clearly intended to move to rescind its prior support of the IRAP grant application before it met on May 23.<sup>1</sup> The Meeting Agenda should have reflected that intent.

With respect to the “Update re: 364 West Street” there was no update provided to the public at the May 23 Meeting. Rather, two members of the Board decided ahead of time that Mr. Stock would make a motion to retain another law firm to act as special counsel to review the February 2021 Settlement Agreement, review prior litigation and “seek some direction as to where we want to go...” It is readily apparent from reviewing May 23 Board Meeting that Mr. Stock and Ms. Hazard wanted to retain a specific law firm – Anderson Kreiger, LLP – to act as special town counsel, likely at the suggestion of the attorney who is representing the 10 taxpayers in litigation against the Town. It is readily apparent that Mr. Stock and Ms. Hazard had communicated outside the presence of an open meeting to specifically discuss the hiring Anderson Kreiger prior to May 23.

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<sup>1</sup> The alternative – which is equally improper – is that Mr. Stock got carried away after stating that he is “no friend to the railroad” and impulsively decided to move to withdraw the Board’s support of the IRAP grant for that reason. It certainly did not appear that Mr. Stock had read the IRAP application or made any substantive assessment of the project, other than that he does not like G&U or its President.



Moreover, the Board did not vote to hire Anderson Kreiger at its May 23 Meeting. Here is the link to the audio-visual stream of the May 23 Board Meeting: [https://townhallstreams.com/stream.php?location\\_id=56&id=45588](https://townhallstreams.com/stream.php?location_id=56&id=45588).

Mr. Stock did make an initial motion to retain Anderson Kreiger. However, Mr. Keyes interjected at approximately 2:53:00, to state that the proper procedure would be to have Anderson Kreiger come in front of the Board for an interview so that the Board would understand the expertise the prospective new law firm would bring to the Board / Town before the law firm was hired. Mr. Stock responded to Mr. Keyes at 2:53:25 that he agreed with Mr. Keyes, stating in part that having a proposed new vendor, such as a proposed new special town counsel, interview with the Board before being retained was “fairly standard operating procedure.” Mr. Stock made a motion that was read by the Town Administrator at the 2 hour and 58-minute mark of the Board meeting:

“to seek separate counsel – specifically Anderson Kreiger - from Boston Mass to come in and at least talk to the board but toward the end of reviewing the settlement agreement and determining next steps.” [sic]

The Motion voted on by the Board on May 23 did not authorize the retention of Anderson Kreiger, LLP as Special Counsel to the Town. The 3-0 vote in favor of the Motion that was actually made on May 23 with respect to new special town counsel, authorized the Board to interview and meet the law firm of Anderson Kreiger before voting on whether to retain Anderson Kreiger.

However, on June 3, 2022, Attorney David Mackey from Anderson Kreiger wrote a letter to the Board to confirm that he and his firm had already been retained to represent the Town of Hopedale “in connection with pending litigation involving the Grafton & Upton Railroad Company and disputes related to that litigation.” Obviously, the decision to retain Anderson Krieger was done improperly and not at a meeting of the Select Board. This was another gross violation of the Open Meeting Law, GL. c 30A. Moreover, as set forth above, there is no “pending litigation” between the Town and the G&U. The Town voluntarily moved to dismiss its Land Court appeal, which was allowed on May 2. The Land Court case between the Town and the G&U has concluded and is not pending so it is very unclear and misleading to state that Anderson Kreiger has been retained “in connection pending litigation.”

The May 23 Meeting as it relates to Agenda Items E4 and E5 was violative of the Open Meeting law and therefore, the votes taken on these agenda items – included the purported vote to hire Anderson Kreiger are not valid.

#### The June 6, 2022 Meeting

In his letter of June 3, 2022 to the Board, Attorney Mackey also states that Anderson Kreiger’s legal fees are likely going to be paid by private donors. These donors have not been identified and their arrangement and understandings with Attorney Mackey and his law firm have not been disclosed. However, Attorney Mackey did disclose at the meeting of June 6 that he was in contact with Attorney Lurie who represents 10 taxpayers in pending litigation against the Town. Tellingly, and shockingly, Attorney Mackey refused to disclose in open session the content of those communications when asked. There was no legal basis for Attorney Mackey to refuse to disclose the content of discussions that he had with counsel for the 10 taxpayers (who

have active litigation against the Town) in open session other than to protect the interests of the ten taxpayers, at least some of whom are donating funds to pay Anderson Kreiger's legal fees.

The acceptance of anonymous private donations to fund this litigation is deeply troubling. I was stunned that neither Ms. Hazard, Mr. Stock, nor Attorney Mackey pushed back on the notion (advanced by several residents, including the lead plaintiff in the ten-taxpayer lawsuit against the Town) that anonymously funding municipal litigation is akin to making a charitable donation to the Town library. To the contrary, by accepting private funds, the Board has ceded its authority to a small group of residents who have repeatedly advocated that the Town adopt an all-or-nothing, "no stone unturned" litigation approach. Would the Town take this approach if it was not taking money from private donors? Conversely, would the private donors fund the Town's legal bills if the Town decides the donors' preferred approach is not in the Town's best interest? And what are the limits of these donors' largesse? If the Town files a new suit and loses are the private donors obligated (and able) to pay the full extent of the Town's exposure?<sup>2</sup> Or would that fall to the taxpayers who have been told that there will be no cost to them?

The Board can't even begin to answer the above questions because it won't identify the donors. This poses additional serious questions: do the donors want the Town to take action for purely altruistic reasons, or do they have ulterior motives? Do any of the anonymous donors create a conflict of interest for the law firm? Are any of the ten-taxpayer plaintiffs, their lawyers, or their lawyer's other clients donating? Is further litigation the best thing for the Town, or is it driven and paid for by a vocal minority? The fact that the Town's legal fees are being paid does not justify or allow the Town to be used as a named party in litigation, which may in fact be for the benefit and for the purposes of unknown private entities or donors. The fact that these "private donors" are willing to pay the exorbitant hour fees quoted in Attorney Mackey's June 3 letter creates a clear division of Attorney Mackey's loyalties. Attorney Mackey is well aware that the Town could never afford to pay these rates, which are multiples of the prevailing hourly rates for municipal legal work. This payment arrangement creates just the sort of divided loyalty which G.L.c. 268A §17(a)(b) and (c) specifically prohibits:

(a) No municipal employee shall, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly receive or request compensation from anyone other than the city or town or municipal agency in relation to any particular matter in which the same city or town is a party or has a direct and substantial interest.

(b) No person shall knowingly, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly give, promise or offer such compensation.

(c) No municipal employee shall, otherwise than in the proper discharge of his official duties, act as agent or attorney for anyone other than the city or town or municipal agency in prosecuting any claim against the same city or town, or as agent or attorney for anyone in connection with any particular matter in which the same city or town is a party or has a direct and substantial interest.

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<sup>2</sup> The Town's exposure as a result of a finding of a breach of the Settlement Agreement would be significant, including the obligation to pay the defendants' attorneys fees. I'm sure that the Board is aware that the attorneys fees clause in the Settlement Agreement is not a fee-shifting provision, meaning that the Town will not be entitled to attorneys fees in the event it files suit to rescind the agreement and is somehow successful in that endeavor.

See also, Edgartown v. State Ethics Com., 391 Mass. 83, 90-91 (1984)(“As attorney for Edgartown, Mr. van Gestel would be a "municipal employee" acting as attorney for other parties, for compensation, relative to a particular matter in which Edgartown is interested. General Laws c. 268A, § 17, precludes him from doing so, since his duties for the town do not include representing private citizens, or receiving or requesting compensation from them.)(emphasis supplied).

As you know, we have requested copies of any legal opinions obtained by the Board with respect to the private and/or anonymous funding of litigation. We also intend to seek records of all ethics disclosures made by Anderson Kreiger. If and when they are properly hired as Special Counsel, Attorney Mackey, his partners and his firm would be municipal employees for the purpose of the conflict-of-interest law. Certainly, no arrangement like this should have even been considered until a full ethics disclosure setting forth all relevant facts, including all donors, their agenda and all communications between Attorney Mackey and Attorney Lurie and all connections between them and their firms and their clients were fully disclosed in a letter pursuant to GL. c 268A seeking review by town counsel or the State Ethics Commission. To my knowledge, none of this has been done.

G.L.c. 268A §22 states:

Any municipal employee shall be entitled to the opinion of the corporation counsel, city solicitor or town counsel upon any question arising under this chapter relating to the duties, responsibilities and interests of such employee. All requests for such opinions by a subordinate municipal employee shall be made in confidence directly to the chief officer of the municipal agency in which he is employed, who shall in turn request in confidence such opinion of the corporation counsel, city solicitor or town counsel on behalf of such subordinate municipal employee, and all constitutional officers and chief officers or heads of municipal agencies may make direct confidential requests for such opinions on their own account. The town counsel or city solicitor shall file such opinion in writing with the city or town clerk and such opinion shall be a matter of public record; however, no opinion will be rendered by the town counsel or city solicitor except upon the submission of detailed existing facts which raise a question of actual or prospective violation of any provision of this chapter.

Alternatively, a municipal employee may ask the State Ethics Commission directly for an opinion pursuant to G.L.c. 268B § 3(g). See further, 930 CMR §1.03. The Town must insist that Anderson Kreiger (or any special counsel it retains) complies with G.L.c. 268A before they are retained.

### CONCLUSION

I urge the Board to postpone its June 21 Executive Session for the reasons set forth herein. The published “Meeting Agenda” for the June 21 Select Board Meeting does not comply with the Massachusetts Open Meeting Law. I further urge the Board to formally recognize that its votes on May 23 should be rescinded. If the Board wants to discuss reversing its prior support of G&U’s IRAP Application, it should specifically identify that topic as an agenda item at a future meeting. Likewise, if the Board wishes to retain the law firm of Anderson Kreiger, LLP, or any other law firm to review the Settlement Agreement and to provide legal advice, it

June 21, 2022

Page 7 of 7

should specifically identify that topic as an agenda item at a future meeting. If the Board is considering acquiring real property, the Board should disclose the specific location it is considering for acquisition and discuss that acquisition in open session. Finally, in the event that Anderson Kreiger (or any attorney ) is retained by the Town, the Town should ensure that the payment arrangement has been fully disclosed to and reviewed by the Massachusetts State Ethics Commission after the Commission has been fully apprised of the nature of the engagement, the identity of all individuals and entities who are paying for these legal services it expects to render to the Town, and whether any payments for legal services rendered are from parties associated with the ten-taxpayers (or their benefactors) who have sued the Town in the matter of Reilly et al v. Town of Hopedale et al, 2185CV 238D.

Very truly yours,

/s/ Donald C. Keavany, Jr.

Donald C. Keavany, Jr.

cc: Brian Riley, Esq. ([BRiley@k-plaw.com](mailto:BRiley@k-plaw.com))  
David Mackey, Esq. ([dmackey@andersonkreiger.com](mailto:dmackey@andersonkreiger.com))  
Andrew P. DiCenzo, Esq.  
Client

# **EXHIBIT 3**



# TOWN OF HOPEDALE

78 Hopedale Street - P.O. Box 7  
Hopedale, Massachusetts 01747  
Tel: 508-634-2203 Fax: 508-634-2200  
www.hopedale-ma.gov

**Select Board**  
Glenda A. Hazard, Chair  
Brian R. Keyes  
Bernard J. Stock

**Town Administrator**  
Diana M. Schindler

**Select Board  
Meeting Agenda  
REMOTE MEETING  
July 6, 2022  
6:30 PM**

On June 16, 2021, Governor Baker signed into law An Act Extending Certain COVID-19 Measures Adopted During the State of Emergency.<sup>1</sup> This meeting will be held via HYBRID means.

If you wish to speak, please reserve comments until the Public Comment section of the meeting. If you are using video, you may either raise your hand to be acknowledged by the Chair or use the "Raise Your Hand" button. Please wait to speak until you are acknowledged by Chair. If participants cannot conduct themselves in accordance with these guidelines, they will be removed from meeting.

Also Streamed Live, click here: [https://townhallstreams.com/towns/hopedale\\_ma](https://townhallstreams.com/towns/hopedale_ma)

### Join Zoom Meeting

<https://us02web.zoom.us/j/81873864755?pwd=NU1IU1Y2dXJXNnBqU0hGRm5RODU0QT09>

Meeting ID: 818 7386 4755

Passcode: 746557

**RECEIVED**

*By Lisa M. Pedroli at 10:00 am, Jul 01, 2022*

Call to order 6:30 p.m.

### A. New Business

1. Annual Individual Reappointments
2. Interim Assistance in Select Board Office

### B. Old Business

1. Address Requests for Change Orders at Mendon Street Intersection Project
2. FY22 End of Year Transfers
3. Update re: Special Town Meeting & Property Appraisal

### C. Correspondence and Selectmen Informational Items (votes will not be taken)

1. A/P Warrant #22-27, \$1,091,263.23, 6/30/2022
2. P/R Warrant #22-27, \$969,083.06, 6/30/2022
3. A/P Warrant #23-01A, \$1,612,091.21, 6/30/22

### 7:00 p.m. **Joint Meeting with Planning Board**

1. Discuss Marijuana Establishment Zoning Bylaw Additions/Amendments

*Please note the Select Board agenda may be subject to change and items not anticipated may be discussed and all listed agenda items may be subject to a vote.*

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<sup>i</sup> This Act includes an extension, until July 15, 2022, of the remote meeting provisions of his March 12, 2020, Executive Order Suspending Certain Provisions of the Open Meeting Law. Section (1) of the executive order allowing public access through adequate, alternative means is independent from Section (2), which allows members of the public body to participate remotely. The public body may conduct its proceedings under the relief provided in section (1) or (2) or both.

<https://www.mass.gov/service-details/updated-guidance-on-holding-meetings-pursuant-to-the-act-extending-certain-covid-19-measures>



# OPEN MEETING LAW COMPLAINT FORM

Office of the Attorney General  
One Ashburton Place  
Boston, MA 02108

Please note that all fields are required unless otherwise noted.

## Your Contact Information:

First Name: Donald Last Name: Keavany, Esq.

Address: 370 Main Street, Suite 970

City: Worcester State: MA Zip Code: 01608

Phone Number: 5087922800 Ext. 225

Email: dkeavany@chwmlaw.com

Organization or Media Affiliation (if any): Grafton & Upton Railroad Company

Are you filing the complaint in your capacity as an individual, representative of an organization, or media?

(For statistical purposes only)

Individual  Organization  Media

## Public Body that is the subject of this complaint:

City/Town  County  Regional/District  State

Name of Public Body (including city/town, county or region, if applicable): Hopedale Select Board

Specific person(s), if any, you allege committed the violation: \_\_\_\_\_

Date of alleged violation: 6/21/22



## Description of alleged violation:

Describe the alleged violation that this complaint is about. If you believe the alleged violation was intentional, please say so and include the reasons supporting your belief.

Note: This text field has a maximum of 3000 characters.

On Thursday afternoon, June 16, 2022, the Selectboard published an Agenda for its June 21, 2022 meeting. A true and accurate copy of the June 21 Agenda is attached hereto as Exhibit 1. The agenda stated that the Board intended to go into Executive Session on June 21, inter alia, to:

"consider the acquisition of real property if the chair declares that an open meeting may have a detrimental effect on the negotiation negotiating position of the public body " ;

The Agenda also stated that the Board intended to return to Open Session after Executive Session had concluded and listed the following one agenda item for the Open session:

"Call for Special Town Meeting and Sign Warrant"

The agenda for the executive session and open session were intentionally vague and did not properly identify the issues to be discussed in those sessions. Moreover, the exception to the Open Meeting Law cited by the Board - G.L.c. 30A §21(a)(6)-, did not apply because there was no known negotiation pending or contemplated and further, if an eminent domain taking was being considered, the negotiation exception would not apply because there is no negotiating involved in an eminent domain taking.

The Board realized it was acting contrary to the Open Meeting Law with respect to the noticed Executive Session agenda and attempted to untangle itself from this violation by altering the motion without notice immediately before going into Executive Session. The motion, as read at the convened open session, stated that the Board was going into Executive Session "... for purpose 6 to consider the acquisition of real property - namely at 364 West Street - the discussion of which in open session would also have a detrimental effect on the Town's position." Putting aside the fact that it was too late to change the motion to go into Executive Session - the Board's reliance on G.L.c. 30A §21(a)(6) was not remedied. The Board was not intending to go into Executive Session to discuss negotiations with Grafton & Upton Railroad Company to purchase 364 West Street. The sole purpose of Executive Session with respect to 364 West Street was to discuss the taking of this property by eminent domain. This was proven correct when the Board returned from Executive Session to vote to schedule a Special Town Meeting to consider one Article. The Board voted to open a Warrant with one article - to authorize the Town to take 364 West Street by eminent domain. The Board then immediately voted to close the Warrant and proceeded to schedule Special Town Meeting to consider the article to acquire 364 West Street for July 11 - in other words - in less than 3 weeks.. The Board violated the Open Meeting Law in multiple respects.

What action do you want the public body to take in response to your complaint?

Note: This text field has a maximum of 500 characters.

Rescind votes taken at 6/21/22 Meeting. Schedule a new meeting and post a new agenda that complies with MA Open Meeting Law as it relates to the Board's intention to schedule a Special Town Meeting to consider an Article to take real property owned by Grafton & Upton Railroad Company, located at 364 West Street, Hopedale, MA. The discussion should happen in Open Session because G.L.c 30A §21(a)(6) does not apply.

## Review, sign, and submit your complaint

### I. Disclosure of Your Complaint.

**Public Record.** Under most circumstances, your complaint, and any documents submitted with your complaint, is considered a public record and will be available to any member of the public upon request.

**Publication to Website.** As part of the Open Data Initiative, the AGO will publish to its website certain information regarding your complaint, including your name and the name of the public body. The AGO will not publish your contact information.

### II. Consulting With a Private Attorney.

The AGO cannot give you legal advice and is not able to be your private attorney, but represents the public interest. If you have any questions concerning your individual legal rights or responsibilities you should contact a private attorney.

### III. Submit Your Complaint to the Public Body.

The complaint must be filed first with the public body. If you have any questions, please contact the Division of Open Government by calling (617) 963-2540 or by email to [openmeeting@state.ma.us](mailto:openmeeting@state.ma.us).

By signing below, I acknowledge that I have read and understood the provisions above and certify that the information I have provided is true and correct to the best of my knowledge.

Signed: Donald C. Keavany (ap)

Date: 7/6/2022

For Use By Public Body  
Date Received by Public Body:

For Use By AGO  
Date Received by AGO:

# **EXHIBIT 1**



**Town of Hopedale**  
78 Hopedale Street, PO Box 7  
Hopedale, MA 01747  
P. 508.634.2203  
Hopedale-ma.gov

**Select Board**  
Brian R. Keyes, Chair  
Louis J. Arcudi, III  
Glenda A. Hazard

**Town Administrator**  
Diana Schindler

**Select Board**  
**Meeting Agenda**  
**REMOTE MEETING ONLY**  
**June 21, 2022**  
**7:00 PM**

On June 16, 2021, Governor Baker signed into law An Act Extending Certain COVID-19 Measures Adopted During the State of Emergency.<sup>1</sup> This meeting will be held via REMOTE means only.

If you wish to speak, please reserve comments until the Public Comment section of the meeting. If you are using video, you may either raise your hand to be acknowledged by the Chair or use the "Raise Your Hand" button. Please wait to speak until you are acknowledged by Chair. If participants cannot conduct themselves in accordance with these guidelines, they will be removed from meeting.

Also Streamed Live, click here: [https://townhallstreams.com/towns/hopedale\\_ma](https://townhallstreams.com/towns/hopedale_ma)

**Join Zoom Meeting**

<https://us02web.zoom.us/j/81873864755?pwd=NU1IU1Y2dXJXNnBqU0hGRm5RODU0QT09>

**Meeting ID: 818 7386 4755**

**Passcode: 746557**

**Call to order 7:00 p.m.**

**RECEIVED**

*By Lisa M. Pedrolis at 3:34 pm, Jun 16, 2022*

**A. Executive Session:**

Motion: To move into Executive Session, pursuant to M.G.L. c.30A, § 21(a) for purpose # (3) (To discuss strategy with respect to litigation that an open meeting may have a detrimental effect on the litigation position of the public body if the chair so declares and purpose #(6) (To consider the acquisition of real property if the chair declares that an open meeting may have a detrimental effect on the negotiating position of the public body); Roll Call Vote. Purpose: Litigation strategy re: Town v. Jon Delli Priscoli, Trustee of the One Hundred Forty Realty Trust, et als, and other related matters. Attorneys Mina Makarious and David Mackey present.

**Board will return to Open Session immediately following.**

**B. New Business**

1. Call for Special Town Meeting and Sign Warrant.

*Please note the Select Board agenda may be subject to change and items not anticipated may be discussed. All listed agenda items may be subject to a vote.*

<sup>1</sup> This Act includes an extension, until July 15, 2022, of the remote meeting provisions of his March 12, 2020, Executive Order Suspending Certain Provisions of the Open Meeting Law. Section (1) of the executive order allowing public access through adequate, alternative means is independent from Section (2), which allows members of the public body to participate remotely. The public body may conduct its proceedings under the relief provided in section (1) or (2) or both.

# ANDERSON KREIGER

**MINA S. MAKARIOUS**

[mmakarios@andersonkreiger.com](mailto:mmakarios@andersonkreiger.com)

T: 617.621.6525

F: 617.621.6625

July 11, 2022

**Via Email: [dkeavany@chwmlaw.com](mailto:dkeavany@chwmlaw.com)**

Donald Keavany, Esq.

Christopher Hays Wojcik & Mavricos, LLP

370 Main Street, Suite 970

Worcester, MA 01608

***Re: Open Meeting Law Complaints***

Dear Donald:

I write on behalf of the Hopedale Select Board (the “Board”) in response to your Open Meeting Law (“OML”) complaint dated June 21, 2022. On July 11, the Board voted to delegate its response to your complaint to our firm as special counsel with respect to matters involving the Grafton and Upton Railroad (“GURR”).

Your complaint alleges OML violations from two Board meetings, on May 23 and June 21, 2022. You allege that two agenda items for the May 23 meeting lacked sufficient detail and that actions were taken to retain counsel outside of a Board meeting. You also allege that the agenda items for the executive session held on June 21 lacked sufficient detail and were not grounds for the Board to enter executive session.

For the reasons set forth below, the Board disagrees with your assertions. The Open Meeting Law requires that topics be listed with “sufficient specificity to reasonably advise the public of the issues to be discussed at the meeting.” G.L. c. 30A, § 20(b); 940 CMR 29.03(1)(b). A topic has sufficient specificity when a reasonable member of the public could read the topic and understand the anticipated nature of the public body’s discussion. *See* OML 2020-125. A public body need not list each and every detail about a topic to comply with the law’s requirements. *Id.* The Board also need not anticipate precisely what its discussion would be under each topic, given that conversation can naturally flow once the Board members consider the agenda item, react to it, discuss it, and respond to questions (from each other or from the public). OML 2019-131; OML 2014-38.

The agenda items from the May 23 meet these standards. You refer to two agenda items from the May 23 meeting:

4. “Update re: GURR Request for Support of IRAP Grant”; and
5. “Update re: 364 West Street”

The discussion on the first item reflected the substance of the agenda item. The Board discussed the request from GURR for support of its IRAP Grant and decided to inform the Massachusetts Department of Transportation that the Board no longer supported that grant request. The agenda item did not say that the Board would only provide information or would only take action in support of GURR. The discussion and actions undertaken by the Board were about this specific topic, such that the public could understand the anticipated nature of the Board's discussion. In fact, had the Board's agenda item pre-decided its position that could itself be a violation of the OML. The decision on what position the Town should take was to be deliberated at the meeting itself, and is not pre-decided by the agenda item.

Similarly, the Board discussed the property identified in the second agenda item that you reference and no other property. The Board discussed how to proceed with the Town's position on that specific property, which your client owns. The Board's decision to interview special counsel to address issues with that property is consistent with the agenda item. Further, as you know there has been no shortage of public attention in Hopedale on the use by GURR of 364 West Street. A Town resident seeing a reference to that item would reasonably understand the Board was once again deliberating on issues arising from that use and that it may make the logical decision at that meeting to seek additional outside assistance on these issues.<sup>1</sup>

The agenda items for the June 21 executive session meeting of the Board also included sufficient detail. Public entities must state the purpose of an executive session, stating all subjects that may be revealed without compromising the purpose for which executive session was called. G.L. c. 30A, § 21(b)(3); OML 2019-163.

Your complaint assumes that the agenda item is insufficiently detailed because there is no pending or imminent litigation between the Town and GURR. But the OML exception covers litigation beyond that one procedural posture. The Board can meet to discuss its litigation position in a pending case, even if GURR is not a party opponent (though GURR is, of course, involved in that litigation and knows that the Town continues to be a party). Furthermore, the Board can meet in executive session to discuss the acquisition of real property, including without naming the property if doing so would affect the Town's negotiating position.

Finally, your letter also includes a lengthy complaint about how the Town plans to pay for Anderson & Kreiger's legal fees as well as several spurious allegations about our conduct.

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<sup>1</sup> Your assertion that our firm considered itself retained after that May 23 meeting is patently false. My partner David Mackey's letter to the Board Chair on June 3 was a proposed engagement letter, and did not state or assert that the firm had been retained. It was only after we met with the Board on June 6 that the Board voted in favor of retaining our services. The Board chair then signed our engagement letter on June 9.

Donald Keavany, Esq.

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While we vigorously disagree with your allegations on that score, they do not address any OML violations and are not relevant here. Accordingly, we will address them as necessary elsewhere.

If you would like to discuss this matter further, please do not hesitate to contact me.

Sincerely,

/s/ Mina S. Makarious

Mina S. Makarious

ecc: Office of the Attorney General, One Ashburton Place, Boston, MA 02108  
Glenda Hazard, Chair, Hopedale Select Board  
Diana Schindler, Town Administrator, Town of Hopedale