

Globe Story 9/7/2022 Ed Burt's Notes

As part of the Sept 5<sup>th</sup>, Boston Globe story, I had provided the following information:

A full local contact list (WS Commission and Tim, Select Board and Diana, Chair of Con Comm and Fin Com, abutters, some residents, lawyers, GURR President and owner)

Summary:

In this specific case, as a Water & Sewer Commissioner, the Commission's most important responsibility is to protect and preserve the water supply. The West St property situation is one of those rare generational issues. If we don't get this right, the Town could suffer the consequences for years, maybe never recover from the ramifications.

Yet, it is actually rather simply. The Town's ownership and preservation of the West St property protects and preserves the Hopedale public water supply. While GURR's ownership and development triggers a risk to the water supply. The magnitude of the risk to the quality of the current water supply maybe debated, but there is absolutely no doubt that GURR's expansion dreams to turn a 155 acre watershed into a railyard complex creates a risk to the future of Hopedale's public water supply.

The Blackstone River Watershed Association said it best – "the intact forests and wetlands on this property represent the best ecotypes for providing natural filtration, recharging groundwater and maintaining stream water quality". Railroad development, even under the best storm water management conditions can not replace the lost watershed that feeds and protects the Mill River, Hopedale Pond and the Hopedale Water Supply.

GURR's approach has been to dismiss the Town's concerns and utilize the preemption claim as broad and as forceful as possible, while circumventing all standard environmental safeguards.

GURR has not obtained, or even requested, any local construction permits, environmental assessments, zoning variances, approvals or permission. GURR just 'claimed' preemption, then used the EPA's General Construction Permit as a way to confuse and further avoid environmental approvals and oversight.

Worse, the Town had (and still has) a legal right to the property. GURR's actions have led many to feel that they just stole the property from the Town. Confirmed by Superior Court Judge Goodwin's statement "In the courts view, the actions of the Railroad were wrong".

This isn't about a railroad in "our backyard". It's about the tactics of this specific railroad and how their expansion desires put the Hopedale Water Supply at risk. Hopedale has done everything possible to protect the water supply. Hopefully the environmental agencies will step in and help before it is too late.

## **The overall background:**

### **Environmental Details – Becca Soloman (508 282 1924) – Hopedale Conservation Committee**

- Residual Designation Petition, factual background
- March 24, 2022 Joint Meeting (video, presentation)
- Actual Violation Notice July 2022

### **Community Organization – Liz Reilly (508 282 0307), Spearheaded community information, action:**

- October 2020 Special Town Meeting – 400+ people, unanimous vote to acquire the property
- Secured additional (anonymous) donations for acquisition and legal cost to defend Town's rights
- Citizen's Ten lawsuit – Feb 2021 response to Select Board's Settlement with GURR

### **Hopedale Residents remain united:**

- July 2019 Public Hearing: GURR files (with DPU) to take 364 West St by Eminent Domain
- October 2020 Special Town Meeting, Authorize and fund property acquisition per Chapt 61 rights
- March 2022 Special Town Meeting, Voted against the "Settlement"
- July 2022 Special Town Meeting, Authorize and fund taking the property by eminent domain

### **Importance of the property – It's the water supply, Hopedale Water & Sewer Commission:**

- DPU Filings – Sept 2019, details the importance of the property as a Watershed for Hopedale's current and future water supply.
- Blackstone Valley Watershed Assoc letter of support
- Statment\_ws\_commission\_082820: Outlines the WS position, "To clarify, right from the beginning, the W&S and Conservation Committee have expressed concerns regarding the impact that GURR's development plans will have on the current water supply."
- Lost Forest Impact Letter, Dec 2021: The magnitude of GURR's development plans raises the question if it is even possible for the Settlement to achieve the intended water supply protection goals.
- Letter, Objection to further land clearing, Feb 18, 2022: Most importantly, the negative impact to the current water supply caused by any more land clearing within the West St watershed would only exacerbate today's water supply concerns and issues. This point cannot be emphasized enough.
- Affidavit – Aug 2022

### **GURR's ever changing plans for the site:**

- Started with 2019 DPU requirement as a track expansion and maybe "a warehouse" to the most recent plan of a 20+ building complex across the entire property.

- GURR's requirement for the property was accomplished at the current railyard in Aug 2021, in part thanks to a \$500,000 State's IRAP grant.
- WS Lost Forest Impact Letter, Dec 2021
- Affidavit of Sean Reardon Aug 2022, (and 8/10/2022 Court transcript)

#### Hopedale Select Board:

- 2018 Draper Falls Project – Joint plan with GURR to take the Draper Mill by eminent domain, triggered a lawsuit. Town lost, Select Board acted beyond their scope of authority.
- Dec 2019 SB denies W&S Commission the use of Special Counsel regarding West St issue
- July 2020 SB Chairman introduces Town's Right of First Refusal, and immediately requests the board to join him in waiving this right
- Feb 2021 over the objections from WS, Conservation, Finance, SB signs the "Settlement"
- May 2022 in his last meeting Selectmen Arcudi votes to drop the Appeal opening the door for the GURR to perform the site work at West St
- May 2022 election, RR supporting majority is no longer in place; SB votes to explore new counsel with understanding/intent to fulfill Town Meeting directives to acquire the property, invalidate the Settlement
- July/Aug 2022 SB pursues taking the property by eminent domain

#### Official Statements:

- Brian Murray, State Rep, Dec 2020: GURR moves are clever, but a "house of cards"
- Superior Court Judge Goodwin: May 5, 2022: "In the court's view, the actions of the Railroad were wrong".
- Superior Court Judge Goodwin: Dec 14, 2021, Motion for clarification: Footnote 3 comments - "In other words, the Railroad gets all the benefits of the agreement and gives up nothing in exchange. This would be unjust, to say the least..."

#### GURR History:

- A similar story in Grafton - <https://www.wgbh.org/news/post/untold-story-how-railroads-bully-small-towns-grafton>
- 2013 GURR reopens abandoned Hopedale track/railyard
- Marketing material in 2017 already presenting themselves as the owners of the West St property, "build to suit" and GURR is meeting with Select Board regarding Hopedale "Draper Falls" project
- Oct 25, 2019 only meeting with GURR owner – will never work with this Town again, (after Draper Falls), don't give a damn about your wells, ...
- Holliston – GURR cleared a large area at Hoping Brook Park, triggering the Stop 555 action
- Can also look at the activities at the current Hopedale railyard as an indication of what to expect should they establish new operations at West St. (Fly Ash and Nuclear Metals Concord Ma contaminated soils transport.)

**Fly Ash Joint Meeting Minutes:**

We officially approved and signed off on the both pages - From the Hopedale website -

<https://www.hopedale-ma.gov/sites/g/files/vyhlif711f/minutes/10-25-2019.pdf>

and the following month, confirmed that no responses/changes had been received.

<https://www.hopedale-ma.gov/sites/g/files/vyhlif711f/minutes/11-21-2019.pdf>

**Pictures (note below and attachment West St Picture Progression):**

The area that has been destroyed is so vast, it is hard to put what you are viewing in perspective.

Here's a few specific drone pictures and captions:

**Drone picture RCS-WestSt-2022-08-12-0105:**

Begins approximately 100 yards in from Route 140, where GURR has replaced the old wooden foot bridge to support heavy equipment, creating an access road into the hillside to the tracks, and beyond.

**Drone Picture RCS-WestSt-2022-08-12-0023:**

The Hillside and tracks where the train was heading back into Forest to Upton and a portion of the upper area.

**Drone Picture RCS-WestSt-2022-08-12-0007**

The continuation up the hillside to the upper western area

**Drone Picture RCS-WestSt-2022-08-12-0021**

An overall view of the lost forest

The attached word document, is an attempt to align these drone pictures with some of camera photos, a progression from the entry way at Route 140, heading into the property, following the access road GURR created to the tracks, and then at the top of the hill. Also included is a before and after satellite view.

**EPA – General Construction Permit**

Attached is the General Construction Permit (original and resubmit because the original expired), and associated preliminary SWPPP that GURR submitted to the EPA.

My understanding is that the EPA 'automatically authorizes' the GCP based on

- a. The assumption that the plans have been approved and the oversight will be done at the local level.
- b. That a detailed storm water plan will be provided when the EPA does get involved with the actual construction of buildings.

However, GURR claims preemption so there's no local approvals or oversight, then promotes this as EPA 'approval' to deflect all other attempts to establish any environmental oversight.

Additionally, note the project description in the SWPPP states 30 acres of clearing.

So while the Town pursued the fight over the property ownership, we were shocked to discover that GURR could start clearing the land without approved plans. As much as that was hard to accept, if that was the process, reforesting 30 acres seemed doable.

Then to find out that GURR has actually cleared 100 acres has been gut wrenching. In June, when the W&S Commission discovered that far more than 30 acres were being cleared, we filed a Residual Designation Petition with the EPA.

Below is just one of my notes to the EPA regarding this.

**Ed Burt** <[eburt.hd@gmail.com](mailto:eburt.hd@gmail.com)>

Mon, Aug 8,  
2:09 PM

to Andrew, Stephanie

Hi Andrew

Couple things related to the General Construction Permit, and its SWPPP that GURR provided

The main purpose of the work was 30 acres for access to their other property but they have now cleared approximately 100 acres with a very different purpose.

Also on page 9/232 that they say the receiving waters are not impaired. See the link to a map which indicates that that Mill river is impaired for metals and pcbs.

I believe The SWPPP is wrong, outdated, etc.. I do not know if there's an update or enough about this permit to say if this incorrect reporting has any consequences.

What do you think, considering the magnitude of what's done and that it continues on..

### Common background:

GURR's "preemption" claims are based from the Interstate Commerce Commission Termination Act of 1995. GURR's claim is that the ICCTA preempts them from State and municipal laws.

**GURR does not requested nor obtained, any local construction permits, environmental assessments, zoning variances – or permission.** Then they hide behind the EPA's General Construction Permit to avoid environmental approvals and oversight.

### What's different in Hopedale?

As bad as each situation was in the other towns, the difference in Hopedale is how GURR's expansion plans have a direct negative impact to the water supply. The lost natural filtration of the watershed to the current water supply and losing this area as a potential future water source when this has been identified as possibly the only other location for a new source could be aspects that Hopedale may never recover from.

A second major factor is that in Hopedale GURR is attempting to acquire new land that is not located within the proximity of a current railyard and doing so with complete disregard to the Town's State Law rights to that same property.

### Other Towns:

**Grafton** – GURR expanded in Grafton creating a new propane transfer terminal at its facility at 42 Westboro Rd. in 2018. GURR claimed preemption developing the site despite local concerns regarding propane transport in the center of Town and being so close to an elementary school.

3 years later, in 2021, the EPA required GURR to pay a \$52,000 civil penalty after it allegedly violated federal chemical accident prevention requirements.

<https://www.wfbh.org/news/post/untold-story-how-railroads-bully-small-towns-grafton>

<https://www.communityadvocate.com/2021/10/06/grafton-upton-railroad-company-faces-civil-penalty-following-epa-settlement/>

### **Holliston (555 Hoping Brook Super Warehouse)**

In nearby Holliston, under a different company name, but same GURR owner and President, they clear cut a section of forest in Holliston. But because they could not claim railroad preemption the Town was able to stop this site work and bring it back to the planning board and the normal approval and oversight process. The Town eventually denied the project, but the clearcutting damage was already done.

<https://stop555hoppingbrook.com/>

[https://www.townofholliston.us/sites/g/files/vyhlf706/f/uploads/555\\_land\\_disturbance\\_violation3.pdf](https://www.townofholliston.us/sites/g/files/vyhlf706/f/uploads/555_land_disturbance_violation3.pdf)

## **Upton**

In the Upton case, GURR took things another step further filing a \$20 million lawsuit against an ex-Town official for her questions and opposition to GURR's expansions.

[http://archive.boston.com/news/local/articles/2011/10/30/upton\\_residents\\_seek\\_answers\\_on\\_revived\\_grafton\\_upton\\_railroad/](http://archive.boston.com/news/local/articles/2011/10/30/upton_residents_seek_answers_on_revived_grafton_upton_railroad/)

GURR expansion followed the same game plan, no notification, no details, ... just do develop the site.

"It just seems kind of bizarre that the principals (Jon Delli Pescoli) are here and they're not forthcoming with the information," said one frustrated resident, Frank Sanchez, who lives near the G&U line.

[http://archive.boston.com/news/local/massachusetts/articles/2012/06/17/railroad\\_critic\\_hit\\_with\\_20\\_million\\_defamation\\_lawsuit\\_claims\\_suit\\_is\\_a\\_slapp\\_at\\_free\\_speech/](http://archive.boston.com/news/local/massachusetts/articles/2012/06/17/railroad_critic_hit_with_20_million_defamation_lawsuit_claims_suit_is_a_slapp_at_free_speech/)

**From Q&A - Should I be concerned that the railroad's site is very close to one of the Town's Glen Avenue well field?**

Although the railroad site is geographically close to the Town's well field on Glen Avenue, the railroad and the well field are in different zones. Furthermore, the aquifer from which we draw our water runs from the well field area towards the railroad, so even if a spill were to reach the ground, it would not flow to the area where the Town draws water.

Protecting our water sources for the municipality is a major concern for all of us. The location of the rail yard is outside of zone 1 and 2 of the wellhead protection area, but the owner has complied with regulations to protect the groundwater from any potential mishap by placing a barrier under the tracks at the rail yard. The owner has also planned and has begun construction of a detention pond as an even greater means of protection, although he is not required to do so.

**Milford** – actually won their case against GURR's preemption claim

<https://casetext.com/case/grafton-upton-r-co-v-town-of-milford>

GURR was attempting to circumvent Town zoning laws.

In the case of the Town of Milford, MA Petition for Declaratory Order the Town prevailed because fabrication work (i.e. Manufacturing) was not transportation and was going to be performed by a non-railroad entity.

### **Hopedale Site visit suggested Itinerary:**

#### **10:00 Meet at Hopedale Town Hall; (78 Hopedale St Hopedale Ma) (1)**

- Use parking lot behind Town Hall on Depot St
- Meet with Town Administrator Diana Schindler
- View of GURR's current Hopedale Railyard which is directly behind the Town Hall

#### **10:15 Depart to West St Site,**

- Stop at Freedom St Bridge (2) for a view of Hopedale Pond to the North, raised Mill and Railyard to the South. With the West St Watershed north of the Pond, this provides a quick perspective of the water flow from North to South.

#### **10:30 Arrive at the abutters property, 225 Milford St, Upton Ma (3)**

- Home of the Sarkisian Family, (note: Home is in Upton, land spans into Hopedale)
- 10 minute walk to the RR site, during which meet with Dave Sarkisian and Liz Reilly.
- Liz is the driving force behind the Citizen's 10 lawsuit (the State cases regarding the Town's claim to West St property).

#### **11:30 Back at Sarkisian home, to the West St entrance (4)**

- Meet with abutters at 363 West St (Michelle Smith) and
- Bernie Stock (Selectman)

#### **12:00 – Water Plant and Wrap-up**

- Meet with Tim Watson (WS Manager),
- (note: running late and time constraint, this last meeting did not take place)

### **Background and Map:**

#### **Hopedale Public Water Supply**

As one of the State's smallest public water departments, with just under 2,200 users, the Hopedale Water & Sewer Commission serves ~95% of Hopedale.

The quantity of the water supply has been an ongoing concern in Hopedale—one that the Town has worked diligently to address—for decades. Making matters worse, one of the Town's bedrock wells was officially deactivated in February 2022 due to high pretreatment PFAS levels.

In short, Hopedale Pond and the Mill River are important to the current and future water supply. With RR development at 364 West St, even the best storm water management conditions can not replace the lost watershed that feeds and protects the wetlands, river and pond. Specifically:



1. RR development becomes another negative factor to the current water supply. (GURR's Hopedale Railyard, raised Draper Mill area, capped Freedom St Landfill, and Sewer Plant).
2. RR development eliminates this area as a potential new well source in the future.
3. RR development also comprises Hopedale Pond, impacting, if not eliminating, the future opportunity to utilize the Pond as a reservoir should new well sources continue to be unsuccessful.

Map of the 4 stops. (attached)

#3 is the only one that requires a bit of a walk

Hopedale Water Treatment plant is south of the GURR railyard

Response to correction request –

“Last year, after residents sued the town to block the settlement 2) and Hopedale’s Town Meeting rejected it, 3) a state superior court judge effectively nullified the agreement.

1. after residents sued the town to block the settlement

- Although 11 residents officially signed onto the Citizens Complaint, they had the vast support of the entire Hopedale community as evidenced by the overwhelming support of 3 separate Town Meeting votes. (Oct 2020, March 2022 and July 2022).
- Additionally, the Select Board (by a 2-1 vote) agreed to the Settlement over the objections of the Conservation Committee, Water and Sewer Commission and Finance Committee.
- As stated in the original complaint (Verified complaint attached). Point #82 pretty much sums up the attempt to “block the settlement” –
  - (Point 82 – On March 2, 2021, the Hopedale Citizen’s brought suit in Worcester Superior Court against the Town of Hopedale, the Board of Selectmen and the Railroad Defendants to enjoin the execution of the Settlement Agreement....

2) and Hopedale’s Town Meeting rejected it

- Hopedale Town Meeting did in fact reject the settlement. Articles 8 thru 12 of the Special Town Meeting in March 2022 were directly related to the Settlement. Each overwhelming rejecting the Settlement terms.

3. state superior court judge effectively nullified the agreement.

- State Superior Court Judge Goodman closed her May 6, 2022 by stating that “In the court’s view, the actions of the railroad were wrong. In addition, there appears to be grounds to rescind the Settlement Agreement. This case, however, does not present an opportunity for this court to address those issues.”
- Prior to the actual ruling, on December 16, 2021, Judge Goodwin ruled on the motion to clarify (attached), in which she outlined the steps explaining how the Settlement may not take effect. Specifically stating - “Therefore, the Settlement Agreement is not effective”

- The footnotes (#3) of this ruling are especially telling. "In other words, the Railroad gets all the benefits of the agreement and gives up nothing in exchange. This would be unjust, to say the least..."