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James A. Dumont, Esq. Caroline F. Engvall, Legal Assistant

July 30, 2016

By email to:

Hinesburg Select Board
And Hinesburg Vermont Gas-Geprags Park Subcommittee
c/o Bud Allen, Esq.

Re: Notice of Open Meeting Law Violations

Dear Members of the Select Board and of the Vermont Gas-Geprags Park Subcommittee:

I write pursuant to 1 V.S.A. § 314 to provide you with notice of violations. Please see the attached draft complaint.

On behalf of my clients I ask that you remedy the violations by declaring that the post-adjournment meeting on July 27, 2016 occurred in violation of the law, by producing the written or electronic communications that were provided by or to some of you prior to the July 28, 2016 Select Board meeting as described in the draft Complaint, and by declaring that the July 28, 2016 vote occurred in violation of law and was void.

We will hand-file a paper copy of this letter and its attachment to the Town Clerk on Monday.

Sincerely,

Jim

James A. Dumont, Esq.

s

State of Vermont
County of Chittenden

Nancy Baker, Linda Gage, William Marks, Lawrence Shelton and Rachel Smolker	**DRAFT COMPLAINT FOR FOR NOTICE TO SELECTBOARD PURSUANT TO 1 VSA § 314**
v.	
The Town of Hinesburg, the Select Board of the Town of Hinesburg, the Vermont Gas-Geprags Park Subcommittee and Vermont Gas Systems, Inc.	Docket No.

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COMPLAINT FOR VIOLATION OF THE OPEN MEETING LAW

Now come Nancy Baker, Linda Gage, William Marks, Lawrence Shelton and Rachel Smolker, by and through the Law Office of James A. Dumont, Esq., PC, and they allege as follows:

1. Nancy Baker, Linda Gage, William Marks, Lawrence Shelton and Rachel Smolker are residents of Hinesburg, in Chittenden County, Vermont.
2. The Town of Hinesburg is a Vermont municipality.
3. Geprags Park is a public park in Hinesburg.
4. Geprags Park was deeded to the Town by a decree of distribution from the Estate of Dora Geprags, in 1991; the Decree contained a covenant restricting the use to "as a public park or school, or for public recreational or educational purposes…"
5. The town accepted the deed and the restrictions and dedicated the land to public use.
6. Vermont Gas Systems, Inc., is in the business of providing natural gas to customers in Vermont.
7. Vermont Gas Systems, Inc., has proposed to construct a gas pipeline through Geprags Park.

8. Vermont Gas Systems, Inc., is named as a Defendant in this matter pursuant to V.R.C.P. 18 and 19.
9. Geprags Park is regularly used by each of the Plaintiffs because of its natural conditions, including its trails, trees, shrubs and wetlands.
10. Mr. Marks has spent many hours at the park, maintaining and improving the park, in addition to visiting the park for recreation.
11. Ms. Baker visits the Park two to three times a week for recreation.
12. Mr. Marks and Ms. Baker would be harmed to a larger degree and in a more intense manner than the general population would be harmed if the park were to be used as the site of a natural gas pipeline as proposed by Vermont Gas Systems, Inc.
13. Under 24 V.S.A. § 4505, the Hinesburg Conservation Commission has the authority to administer Geprags Park.
14. Mr. Marks has been and remains a member of the Hinesburg Conservation Commission.
15. Vermont Gas Systems, Inc., in or prior to July of 2013, proposed an agreement to the Select Board for the use of Geprags Park for a natural gas pipeline.
16. Mr. Marks and other members of the Conservation Committee and other members of the public objected because of the impact on the park.
17. Mr. Marks also informed the Town's attorney of precedent of the Vermont Supreme Court holding that eminent domain cannot be used to obtain a utility easement through parklands dedicated to public use.
18. On August 19, 2015, the Town, through its lawyer, executed a "Stipulation" with Vermont

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Gas Systems, Inc.

19. In response to a later inquiry by Plaintiffs' counsel, the Town's attorney stated that he was unaware of any public vote of the Select Board which had authorized him to execute the Stipulation.

20. In the Stipulation signed by the Town's attorney, the Town agreed not to object to the eminent domain proceeding, agreed that the condemnation Petition satisfies the legal standards for condemnation (that the pipeline easements are "reasonably necessary to provide adequate service to the public" and "will not unduly interfere with the orderly development of the region and scenic preservation") and agreed the compensation offered by Vermont Gas Systems, Inc., was fair and reasonable.

21. In fact, the Stipulation was never approved by vote at a public meeting of the Select Board.

22. The plaintiffs had remained unaware of the Stipulation in 2015.

23. In February of 2016, the plaintiffs learned of the Stipulation.

24. The plaintiffs and others subsequently submitted detailed notice of violations of the Vermont Open Meetings Law to the Select Board pursuant to 1 V.S.A. § 314.

25. On March 21, 2016, the Select Board responded to the written notice by voting to declare the Stipulation void pursuant to 1 V.S.A § 314(b)(2).

26. The Select Board subsequently voted not to ratify the Stipulation pursuant to 1 V.S.A. § 314(b)(4).

27. On April 18, 2016, the Select Board acted on a motion to create and appoint the members of a public body to study, negotiate and report to the Select Board about a possible new agree-

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ment with Vermont Gas Systems, Inc.

28. The motion specified that the new body would be comprised of the Chairman of the Select Board, Mr. Michael Bissonette, one member of the Select Board, Mr. Aaron Kimball, Town Administrator Trevor Lashua or his assistant Renae Marshall, and one member of the Conservation Commission. The motion did not specify any particular member of the Conservation Commission. The motion was adopted. The new body was referred to as the Vermont Gas-Geprags Park Subcommittee of the Select Board.

29. The Chairman of the Select Board served as Chairman of the Vermont Gas-Geprags Park Subcommittee.

30. The Vermont Gas-Geprags Park Subcommittee proceeded to post public notice of its meetings, to meet and to create minutes of its meetings.

31. On July 22, 2016, the Town Administrator caused to be posted on the town's website a new agreement with Vermont Gas Systems, Inc. This agreement was labelled "v.06.04."

32. The agreement is 48 pages long. It consists of a detailed single-spaced settlement agreement that is seven pages long, a single-spaced easement deed that is ten pages long, and numerous other attachments.

33. Prior to July 27, 2016, the Vermont Gas-Geprags Park Subcommittee caused to be posted notice of a meeting on July 27, 2016.

34. The notice stated that the Subcommittee would meet at 4 pm at the town hall, to "Review and Discuss v. 06.04 of the Proposed Deed of Easement, Stipulated Agreement, and Attachments."

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35. The notice stated that at 5:45 the Subcommittee would discuss the Public Service Board's process for an upcoming hearing, and then would adjourn at 6 pm.

36. Prior to July 27, 2016, the Select Board had posted a notice and then a revised, annotated notice of a Select Board meeting on July 28, 2016.

37. The initial notice of the Select Board meeting had stated that the Board would consider action on v.06.04.

38. The revised, annotated notice of the Select Board meeting stated that the Board would consider action on v.06.04 and also details of what that action would consist of. It stated that any amendments of v.0604 "may require the Select Board to warn and hold a special meeting during the early part of next week," that "review and discussion is generally envisioned as the 'action' at the meeting,' and that "No motion is proposed in this document. Staff will have draft motions covering a variety of scenarios should they be needed."

39. The Subcommittee met at 4 pm on July 27, 2016 at the town office.

40. Members of the public and members of the Conservation Commission were present, including Mr. Marks and Ms. Gage.

41. A quorum of the Subcommittee was present, including Mr. Bissonette, Mr. Kimball, and Mr. Lashua as well as the town's attorney.

42. An attorney for and a staff person of Vermont Gas Systems, Inc., were present.

43. Members of the public and of the Conservation Commission voiced objections to v.06.04.

44. During the open meeting, neither the Vermont Gas Systems, Inc.'s attorney nor its staff person made any offers to modify v.06.04.

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45. After participating for roughly 2 hours, and having heard no proposal to amend v.06.04, Mr. Marks left the meeting.

46. About five minutes after Mr. Marks left, the Chairman adjourned the meeting.

47. Ms. Gage and others then left the town hall.

48. While in the parking lot of the town hall, Ms. Gage and others were informed that the attorney for and the staff person of Vermont Gas Systems, Inc, had remained in the town hall after the meeting and were engaged in discussions.

49. Ms. Gage returned to the room where the open meeting had been held.

50. A quorum of the Vermont Gas-Geprags Park Subcommittee was present, including the Town Administrator, Mr. Bissonette, Mr. Kimball and members of the Conservation Commission.

51. Ms. Gage saw that there was a discussion ongoing in which the Town Administrator, the town attorney, Vermont Gas System, Inc.'s attorney and Vermont Gas Systems, Inc.'s staff person were participating.

52. On information and belief, the discussion among the Town Administrator, the Town's attorney, Vermont Gas System, Inc.'s attorney and Vermont Gas System's staff person before Ms. Gage returned to the meeting, but after other members of the public had left the meeting, had included offers by Vermont Gas Systems, Inc., to modify v.06.04.

53. The discussion which occurred while Ms. Gage was present included discussion between the two attorneys of a 'shortcut' pertaining to the vote scheduled for the next evening.

54. If the offers had been made during the noticed meeting of the Subcommittee, Mr. Marks and others could have learned of them, asked questions about them, responded to them, and used

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them to prepare for the upcoming Select Board meeting.

55. On information and belief, the Town Attorney, the Town Administrator, the Town Administrator's Assistant and/or Vermont Gas System's staff person communicated the offers by email or other document to some but not all members of the Select Board.

56. On information and belief, these communications consisted of or were related to the short-cut Ms. Gage overheard being discussed by the attorneys.

57. Plaintiffs attended the July 28, 2016 Select Board meeting.

58. V.06.04 was displayed by projector to the public.

59. No other version of the agreement was displayed or distributed.

60. No amendments to v.06.04 or motions to amend v.06.04 were displayed or distributed.

61. The motions to amend v.06.04 referred to in the revised, annotated notice of the meeting were not displayed or distributed.

62. However, several members of the Select Board arrived at the meeting with written statements explaining why they were supporting specific motions to amend v.06.04.

63. These Select Board members made detailed oral motions to amend various pages of the 48-page document that had been posted on the town's web-site.

64. On information and belief, some or all of the specific motions were comprised of the offers Vermont Gas Systems, Inc., had made on July 27, 2016, which had been communicated to some but not all Select Board members prior to the Select Board meeting, which those Board members had read in preparing their written statements, and which formed the basis for the votes cast by those members.

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65. Members of the Select Board discussed and voted, three to two, in favor of the motion or motions to amend v.06.04.

66. Members of the Select Board who were proposing or discussing a motion or motions to amend v.06.04 did not speak into the microphones or could not be heard by Plaintiffs and other members of the public for other reasons arising from defects in the public address system or other factors.

67. Members of the public complained that they could not hear what was being said by Select Board members during the discussion of the motions.

68. The inability to hear was not remedied by the Select Board.

69. Members of the public, including but not limited to the Plaintiffs, were unable to hear the wording of the proposed amendments, unable to hear substantial portions of the discussion of the amendments and unable to respond to the wording and to the arguments that they could not hear by voicing their comments at the Select Board meeting.

70. One Select Board member complained at or near the end of the meeting that she did not know what the amendments were that had been voted upon.

71. Plaintiffs are aware of three areas of amendment but are not aware of the actual wording voted upon, and Plaintiffs believe that two other areas were addressed in the motion or motions that passed.

72. To the public that had attended the July 28, 2016, Select Board meeting and even one member of the Select Board, there was substantial uncertainty or ignorance of what the Select Board had voted to do.

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73. No minutes of the Select Board meeting had been posted as of July 29, 2016.

74. Nonetheless, on July 29 2016, Vermont Gas Systems, Inc., notified the Public Service Board that it had reached agreement with the Town of Hinesburg.

75. Vermont Gas Systems, Inc., knew that it had reached agreement with the Select Board because the amendments that were adopted by the Select Board were amendments that had been drafted by Vermont Gas Systems, Inc. and submitted to the Town, or had been drafted by the Town's attorney based on Vermont Gas Systems, Inc's verbal offers and his discussions with Vermont Gas, which he shared with Vermont Gas Systems, Inc. and selected Select Board members prior to the Select Board vote.

76. Each of the Plaintiffs will be injured in fact by the actions of Vermont Gas Systems, Inc., in Geprags Park, as set forth in the as-yet unspecified and partially known July 28, 2016 agreement and in the Petition for condemnation. Their use of the Park will be curtailed physically. Their enjoyment of the Park will be diminished.

77. Each of the Plaintiffs has been injured in fact by the failure of the Select Board to comply with the Open Meetings Law, 1 V.S.A. §§ 312-314, as set forth above.

78. On July 30, 2016, the Plaintiffs provided detailed written notice to the Select Board of their claims that the Select Board had failed to comply with the Open Meetings Law and of the relief requested of the Select Board, pursuant to 1 V.S.A. § 314(b).

79. Plaintiffs seek an expedited declaratory ruling pursuant to 1 V.S.A. § 314(c).

<u>COUNT 1 – UNWARNED PUBLIC MEETING</u>

80. Paragraphs 1-79 are incorporated by reference.

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81. Section 312(a) of Title 1 of the Vermont Statutes Annotated states: "All meetings of a public body are declared to be open to the public at all times, except as provided in section 313 of this title. No resolution, rule, regulation, appointment, or formal action shall be considered binding except as taken or made at such open meeting, except as provided under subdivision 313(a)(2) of this title. A meeting of a public body is subject to the public accommodation requirements of 9 V.S.A. chapter 139."

82. Sections 312(c) and (d) require the posting of public notice of and the agenda for each meeting.

83. Section 312(h) states: "At an open meeting the public shall be given a reasonable opportunity to express its opinion on matters considered by the public body during the meeting as long as order is maintained."

84. Section 314(b)(4) of title 1 of the Vermont Statutes Annotated authorizes the Select Board, once notified of a violation, to declare as void "any action taken at or resulting from" a meeting that was not noticed in accordance with § 312 or a meeting that a person or the public was wrongfully excluded from attending.

85. Section 314 authorizes the Superior Court to adopt the same relief if the Select Board does not do so.

86. The July 27, 2016 meeting which occurred after the Chairman announced that the meeting was adjourned, and after Mr. Marks, Ms. Gage and members of the public had left, was a meeting of the Vermont Gas-Geprags Park Subcommittee.

87. Plaintiffs and members of the public were denied the opportunity to attend and comment un-

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der § 312 because they were told the meeting had been adjourned and were not notified that it was going to continue after they had been told it was adjourned.

88. If Plaintiffs or other members of the public had known of the post-adjournment meeting and had been present, they would have known of the proposed amendments to v.06.04 that were voted on the next day and would have known details of the proposed short-cut..

89. If Plaintiffs or other members of the public had known of the post-adjournment meeting and had been present, they would have been able to understand and comment on the proposed amendments to v.06.04 that were voted on the next day, pursuant to 1 V.S.A § 312(h).

90. The meeting which occurred after the first meeting had been adjourned violated 1 V.S.A. §§ 312(a), (c), (d) and (h).

91. The motions which were voted upon the next day "resulted from" the unlawful meeting on July 27, 2016.

92. The Select Board's vote on each of the motions on July 28, 2016 was void.

WHEREFORE the Plaintiffs ask that the Court declare that their rights under the Open Meetings Law have been violated, declare that the July 28, 2016 votes and agreement are void and order the other relief authorized by § 314, including costs and fees.

COUNT 2 – COMMUNICATIONS TO ACHIEVE MAJORITY VOTE

93. Paragraphs 1-92 are incorporated by reference.

94. Section 310(a) of Title 1 of the Vermont Statutes Annotated states: "'Meeting' shall not mean written correspondence or an electronic communication, including e-mail, telephone, or teleconferencing, between members of a public body for the purpose of scheduling a meet-

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ing, organizing an agenda, or distributing materials to discuss at a meeting, provided that such a written correspondence or such an electronic communication that results in written or recorded information shall be available for inspection and copying under the Public Records Act as set forth in chapter 5, subchapter 3 of this title."

95. Plaintiffs have requested copies of all written correspondence and electronic communications that were distributed to some or all Select Board members for the purpose of discussion at the Select Board meeting held on July 28, 2016, which resulted in the motions adopted on July 28, 2016.

96. The Town has not provided the correspondence or communications.

97. Section 314(b)(4) authorizes the Select Board, once notified of a violation, to declare as void "any action taken at or resulting from" a meeting that was not noticed in accordance with § 312 or a meeting that a person or the public was wrongfully excluded from attending.

98. Section 314 authorizes the Superior Court to adopt the same relief if the Select Board does not do so.

99. The undisclosed correspondence or communications constituted a meeting.

100. The undisclosed correspondence or communications were used by one or more members of the Select Board to attain a majority vote on July 28, 2016.

101. Plaintiffs and members of the public were denied the opportunity to attend an open meeting and comment under §§ 312(a) and (h) because the correspondence or communications that were used to obtain a majority vote were not disclosed to them and provided to them in advance of or during the meeting on July 28, 2016.

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102. If Plaintiffs or other members of the public had been disclosed or provided these materials, they would have been able to know of, understand and comment on the proposed amendments to v.06.04 that were voted on at the July 28, 2016, meeting, under §§ 312(a) and (h).

103. The motions which were voted upon on July 28, 2016, "resulted from" the undisclosed correspondence or communications.

104. The Select Board's vote on each of the motions on July 28, 2016 was void.

105. WHEREFORE the Plaintiffs ask that the Court declare that their rights under the Open Meetings Law have been violated, declare that the July 28, 2016 votes and agreement are void and order the other relief authorized by § 314, including costs and fees.

COUNT 3 – UNLAWFUL PUBLIC MEETING ON JULY 28, 2016

106. Paragraphs 1-105 are incorporated by reference.

107. The intent of the legislature was that the proceedings be "open" in the sense that the public can hear and see the proceedings, and then can express its opinion about what it has heard and seen.

108. The intent of the legislature that every member of the public must be able to actually perceive the content of the proceedings is highlighted by the reference to chapter 139 of Title 9. If any member of the public is hearing-impaired, whatever actions are necessary to enable effective communication of the proceedings to that person must be taken in order for the proceeding to be considered open.

109. The Plaintiffs and other members of the public were not able to hear the July 28,

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2016, proceedings.

110. The Plaintiffs and other members of the public were not able to express their opinions about what the Board was considering because they had not been able to hear what the Board was considering.

111. The Plaintiffs and other members of the public were not able to see the written motions that members of the Select Board brought with them or which had been provided by Vermont Gas Systems, the Town's attorney or by Town staff prior to or during the July 28, 2016, proceedings.

112. By the end of the proceedings, at least one member of the Select Board, the Plaintiffs and many other members of the public were unaware of the details of the motion or motions which had been voted upon and approved.

113. Section 314(b)(4) authorizes the Select Board, once notified of a violation, to declare as void "any action taken at or resulting from" a meeting that was not noticed in accordance with § 312 or a meeting that a person or the public was wrongfully excluded from attending.

114. Section 314 authorizes the Superior Court to adopt the same relief if the Select Board does not do so.

115. Plaintiffs and members of the public were denied the opportunity to attend an open meeting, and denied the opportunity to comment, under 1 V.S.A. §§ 312(a) and (h) .

116. The Select Board's vote on each of the motions on July 28, 2016 was void.

117. WHEREFORE the Plaintiffs ask that the Court declare that their rights under the Open Meetings Law have been violated, declare that the July 28, 2016 votes and agreement

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are void and order the other relief authorized by § 314, including costs and fees.

Date: July ___, 2016

NANCY BAKER, LINDA GAGE,
WILLIAM MARKS, LAWRENCE
SHELTON and RACHEL SMOLKER

By:

_____

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