

## Mark Purple

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**From:** Mark Purple  
**Sent:** Thursday, May 3, 2018 3:52 PM  
**To:** Brian Shea; Brian Shifrin; Bonnie Phaneuf; Lisa Braccio  
**Cc:** Vanessa Hale  
**Subject:** FW: Pre-town meeting, Part 2

Good afternoon. See below from Dan, regarding releasing attorney-client privileged information as requested by Marnie Hoolahan at the last meeting.

Dan feels that in order to release the information, it would require a vote of the Board to do so. That could not happen prior to the May 15 meeting. I don't know whether or not the Board intends to discuss any of the information contained in Jay's 5/1 memo at the next meeting, but please keep in mind that doing so in a public session will indirectly make the opinion letter a public document.

Thanks.

Mark  
**Mark J. Purple**  
**Town Administrator**  
**Town of Southborough**  
**P: 508-485-0710**  
**F: 508-480-1061**

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**From:** Kolenda, Daniel L [mailto:Daniel.Kolenda@ca.com]  
**Sent:** Wednesday, May 2, 2018 9:57 PM  
**To:** Mark Purple <mpurple@southboroughma.com>  
**Subject:** Re: Pre-town meeting, Part 2

Mark, one clarification - during Public Comment a request was made for the Board to waive privilege and release Counsel's advise to us. I suggested the Board, after having an opportunity to review, may consider waiving privilege and releasing to the petitioner. It was not automatic. I for one have reservations about waiving privilege and what precedent that could set. Anyway, I wanted to provide that clarification. No promise was made other than a commitment to consider waiving and releasing after our review. I may want Counsel's position on any possible release too.

Dan

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**From:** Mark Purple <mpurple@southboroughma.com>  
**Sent:** Wednesday, May 2, 2018 4:50:38 PM  
**To:** Board of Selectmen  
**Subject:** Pre-town meeting, Part 2

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Good afternoon, again.

One snag with the Pre-Town Meeting on May 15. Jay Talerma cannot attend, because he is attending town meeting in Rehoboth that evening as counsel. Jay provided the opinion letter on Articles 1&2 (sent to you on 4/28), which the Board agreed to release to the sponsors of those articles in advance.

With Jay not being able to attend, it might be better to release Jay's letter now, and allow for questions to be asked in advance of the 5/15 meeting (by both Selectmen and sponsors) so that Jay can provide written response for the 5/15 meeting. I will defer to Dan on this question. Feel free to provide me (and only me) your thoughts on the matter, and any questions you may have on Jay based on his May 1 opinion letter.

Thanks.

Mark

**Mark J. Purple**  
**Town Administrator**  
**Town of Southborough**  
**P: 508-485-0710**  
**F: 508-480-1061**

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## Mark Purple

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**From:** Mark Purple  
**Sent:** Tuesday, May 8, 2018 8:16 PM  
**To:** Daniel Kolenda  
**Subject:** Fwd: Re: Request for Counsel opinion on my CP

Dan:

I think this is where you have to respond.

Thx.

---

Mark

*Sent from my Verizon 4G LTE Droid*

----- Forwarded message -----

**From:** Marnie Hoolahan <marniehoolahan@gmail.com>  
**Date:** May 8, 2018 8:05 PM  
**Subject:** Re: Request for Counsel opinion on my CP  
**To:** Mark Purple <mpurple@southboroughma.com>  
**Cc:** Daniel Kolenda <dkolenda@southboroughma.com>, Bonnie Phaneuf <bphaneuf@southboroughma.com>, Brian Shea <bshea@southboroughma.com>, Brian Shifrin <bshifrin@southboroughma.com>, Lisa Braccio <lbraccio@southboroughma.com>

Thanks Mark,

I would appreciate further clarification on the requirement for a vote. At the BOS meeting, most of the BOS, shook their heads in affirmation to waiving the right of attorney client privilege to releasing the opinion by counsel. I walked away with the impression that the majority had agreed without taking a "vote."

Further to my positive impression, Mr. Shea stated at candidate's night, the following night, at tape timer 2:01:00; "We committed last night at our meeting (*BOS, May 1st 2018*) that we would provide Ms. Hoolahan a copy of correspondence that would be offered to us by town counsel on the wording of the citizen's petition article." Please see tape: <https://www.youtube.com/watch?v=eeWuIS08knw>

I understand that you are meeting on Tuesday and if a formal vote is required than I am specifically asking for an agenda item to request a formal vote on this matter however, both actions at BOS and a subsequent statement made by Mr. Shea suggest that a decision has already been made.

I state simply that my goal is to work with the town and find resolutions that can achieve harmony. I am not an enemy Mr. Kolenda, I am merely transparent with my agenda.

Sincerely,  
Marnie Hoolahan  
26 Clifford St.

On Tue, May 8, 2018 at 7:28 PM, Mark Purple <[mpurple@southboroughma.com](mailto:mpurple@southboroughma.com)> wrote:

Marnie:

Good evening.

Dan had said that the Board would need to vote to release the opinion, and cannot do that until they meet. You may want to discuss further with him, so I have copied him on this email.

Thanks.

Mark

*Sent from my Verizon 4G LTE Droid*

On May 8, 2018 7:06 PM, Marnie Hoolahan <[marniehoolahan@gmail.com](mailto:marniehoolahan@gmail.com)> wrote:

Hi Mark,

I am contacting you to inquire on the BOS agreement to waive attorney client privilege to provide the legal opinion from counsel on my CP article on quorum. Would you be able to send that my way at your earliest convenience?

Thank you,  
Marnie

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## Mark Purple

---

**From:** Mark Purple  
**Sent:** Wednesday, May 9, 2018 4:03 PM  
**To:** Daniel Kolenda; Brian Shea  
**Subject:** Talerman opinion

Good afternoon.

I had a conversation this afternoon with Jay Talerman about the opinion letter he issued regarding articles 1&2. While Jay agrees that the Board could certainly take the approach that it is protected under attorney-client privilege, he does not see a reason why it cannot be released. There is nothing in the opinion that is controversial, and it simply articulates the deficiencies in both articles.

I think it would be beneficial for Planning to have it for their public hearing Monday night, and is of no useful benefit to the petitioners to have it now as well. In that regard, I would concur with Jay about releasing the memo now.

Let me know your thoughts.

Thanks.

Mark  
*Sent from my Verizon 4G LTE Droid*

## Mark Purple

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**From:** Mark Purple  
**Sent:** Thursday, May 10, 2018 10:07 AM  
**To:** 'Marnie Hoolahan'; 'Linda Perkins'  
**Cc:** Daniel Kolenda; Bonnie Phaneuf; Brian Shea; Brian Shifrin; Lisa Braccio  
**Subject:** RE: Request for Counsel opinion on my CP

Marnie:

Good morning.

Following up on this issue, I did speak with counsel and he reaffirmed that his opinion letter is protected under attorney-client privilege until the Board votes to release it as a public document. To that end, the Board will be taking up that item under the Pre-Town Meeting discussion beginning at 7:00 PM at their meeting on May 15. The Board can either vote to retain the privilege or to release the document at that time.

See you on Tuesday. Thanks.

Mark

**Mark J. Purple**  
**Town Administrator**  
**Town of Southborough**  
**P: 508-485-0710**  
**F: 508-480-1061**

**From:** Marnie Hoolahan [mailto:marniehoolahan@gmail.com]  
**Sent:** Tuesday, May 8, 2018 8:05 PM  
**To:** Mark Purple <mpurple@southboroughma.com>  
**Cc:** Daniel Kolenda <dkolenda@southboroughma.com>; Bonnie Phaneuf <bphaneuf@southboroughma.com>; Brian Shea <bshea@southboroughma.com>; Brian Shifrin <bshifrin@southboroughma.com>; Lisa Braccio <lbraccio@southboroughma.com>  
**Subject:** Re: Request for Counsel opinion on my CP

Thanks Mark,

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Sincerely,  
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26 Clifford St.

On Tue, May 8, 2018 at 7:28 PM, Mark Purple <[mpurple@southboroughma.com](mailto:mpurple@southboroughma.com)> wrote:

Marnie:

Good evening.

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Thanks.

Mark

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Thank you,  
Marnie

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## Mark Purple

---

**From:** Mark Purple  
**Sent:** Thursday, May 10, 2018 9:32 AM  
**To:** 'Kolenda, Daniel L'  
**Cc:** Brian Shea; Vanessa Hale  
**Subject:** RE: Talerman opinion letter

Dan:

I think that the agenda item for the warrant could cover it, but if you want the item specifically listed, I could do that. Your call.

I can let Marnie and Linda know what the plan is regarding Tuesday night.

---

**Mark J. Purple**  
**Town Administrator**  
**Town of Southborough**  
**P: 508-485-0710**  
**F: 508-480-1061**

---

**From:** Kolenda, Daniel L [mailto:Daniel.Kolenda@ca.com]  
**Sent:** Thursday, May 10, 2018 9:29 AM  
**To:** Mark Purple <mpurple@southboroughma.com>  
**Cc:** Brian Shea <bshea@southboroughma.com>; Vanessa Hale <vhale@southboroughma.com>  
**Subject:** RE: Talerman opinion letter

Thanks Mark, do you want to let the petitioner know:

- that the document is protected under attorney-client privilege; and
- on the advice of counsel, on Tuesday night, the Selectmen may discuss retaining the privilege, or releasing counsel's memo as a public document

Would the agenda need to be updated?

Dan

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**From:** Mark Purple [mailto:mpurple@southboroughma.com]  
**Sent:** Thursday, May 10, 2018 9:15 AM  
**To:** Board of Selectmen <bos@southboroughma.com>  
**Cc:** Vanessa Hale <vhale@southboroughma.com>  
**Subject:** Talerman opinion letter

*CAUTION: This email originated from outside of CA. Do not click links or open attachments unless you recognize the sender and know the content is safe.*

Good morning.

Thanks to those of you who participated in the ULI process yesterday. It was a good experience, and helped to showcase the Town to an outside entity, both our good points and those that need improvement. Once the final report has been submitted, we can use it as a tool to help identify those areas that need attention as the Board defines its goals moving forward.

There has been a lot of discussion about the memo Jay Talerman did regarding Articles #1&2 of the special town meeting warrant. I had several conversations with Jay and Dan yesterday afternoon, and I think that there is a plan regarding the sharing/potential release of the document:

1. I will have Jay send the document to Don Morris today under attorney-client privilege, with the understanding of what that entails. Planning Board will then understand the legal review of those two articles before the public hearing on May 14. Jay's memo cannot be discussed publicly;
2. On Tuesday night, the Selectmen can discuss releasing Jay's memo as a public document. Should the Board agree to do that, then it can be released to the petitioners.

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As a note, Jay fully concurs that the document is protected under attorney-client privilege. However, he does not see anything in the document that would preclude the Board from releasing it, should you choose to do so.

If you have any questions, please let me know. Thanks.

Mark  
**Mark J. Purple**  
**Town Administrator**  
**Town of Southborough**  
**P: 508-485-0710**  
**F: 508-480-1061**

## Mark Purple

---

**From:** Mark Purple  
**Sent:** Wednesday, May 9, 2018 6:13 PM  
**To:** Daniel Kolenda  
**Cc:** Brian Shea  
**Subject:** RE: Talerman opinion

Correct. I will get on that tomorrow.

Thx.

Mark

*Sent from my Verizon 4G LTE Droid*

On May 9, 2018 5:54 PM, "Kolenda, Daniel L" <Daniel.Kolenda@ca.com> wrote:

If we are allowed to share it with them while maintaining the privilege, meaning they are informed and accept it as a privileged communication, then I say we do that. Only the Board can waive at the May 15<sup>th</sup> meeting, or at the Pre-Special Town Meeting, or never.

Dan

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**From:** Kolenda, Daniel L  
**Sent:** Wednesday, May 09, 2018 5:22 PM  
**To:** 'Mark Purple' <mpurple@southboroughma.com>  
**Cc:** Brian Shea <bshea@southboroughma.com>  
**Subject:** RE: Talerman opinion

If we release to Planning, are they meeting on the 14<sup>th</sup>? If they discuss it, does that make it public?

I'm concerned about precedence.

Dan

---

**From:** Mark Purple [<mailto:mpurple@southboroughma.com>]  
**Sent:** Wednesday, May 09, 2018 5:17 PM  
**To:** Kolenda, Daniel L <[Daniel.Kolenda@ca.com](mailto:Daniel.Kolenda@ca.com)>  
**Cc:** Brian Shea <[bshea@southboroughma.com](mailto:bshea@southboroughma.com)>  
**Subject:** RE: Talerman opinion

You can release to Planning with the privilege intact, and vote to release on 5/15.

Mark

*Sent from my Verizon 4G LTE Droid*

On May 9, 2018 4:55 PM, "Kolenda, Daniel L" <[Daniel.Kolenda@ca.com](mailto:Daniel.Kolenda@ca.com)> wrote:

Challenge is the Board did not vote to release. Don't we need a vote of the members? If we release to Planning, does that waive the privilege (which I'm not inclined to do as a matter of practice).

Dan

**From:** Mark Purple [<mailto:mpurple@southboroughma.com>]

**Sent:** Wednesday, May 09, 2018 4:03 PM

**To:** Daniel Kolenda <[dkolenda@southboroughma.com](mailto:dkolenda@southboroughma.com)>; Brian Shea <[bshea@southboroughma.com](mailto:bshea@southboroughma.com)>

**Subject:** Talerman opinion

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I think it would be beneficial for Planning to have it for their public hearing Monday night, and is of no useful benefit to the petitioners to have it now as well. In that regard, I would concur with Jay about releasing the memo now.

Let me know your thoughts.

Thanks.

Mark

*Sent from my Verizon 4G LTE Droid*

## Mark Purple

---

**From:** Mark Purple  
**Sent:** Wednesday, May 9, 2018 6:12 PM  
**To:** Daniel Kolenda  
**Cc:** Brian Shea  
**Subject:** RE: Talerman opinion

Jay can let them know that it's still confidential, so they can't discuss publicly.

Mark

*Sent from my Verizon 4G LTE Droid*

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