DAR No. _____
Appeals Court No. 2025-P-0963

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

TOWN OF NAHANT,
Plaintiff-Appellant,

v.

12.5 ACRES OF LAND+/- SITUATED IN NAHANT, MASSACHUSETTS,

and,

NORTHEASTERN UNIVERSITY,
Defendants–Appellees.

On Application for Direct Appellate Review of a Judgment of the Superior Court Department for the Trial Court (Essex, ss.)

APPLICATION FOR DIRECT APPELLATE REVIEW

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REQUEST FOR DIRECT APPELLATE REVIEW

It's no small thing for a court to hold that a supermajority of town residents, who voted in open town meeting after vigorous debate to take conservation and access easements by eminent domain, were lying about their reasons for doing so. And so it's no surprise this Court has warned that judges "should not easily attribute improper motives to a town, and to its citizens voting at a town meeting, if there were valid reasons that would have supported the town's action." *Pheasant Ridge Assocs. Ltd. Partnership v. Town of Burlington*, 399 Mass. 771, 777 (1987). The Court therefore has crafted a legal standard under which it is "not easy to prove" that a town took property "in bad faith," "particularly . . . where the significant event is an affirmative vote . . . of the persons voting at a town meeting[.]" *Id.* at 776. Indeed, even as the Court found a bad-faith taking in *Pheasant Ridge*, it recounted many other cases in which courts had rejected claims of bad faith, observing that the case before it was "most unusual and not likely soon to be replicated." *Id*. at 775.

The superior court below found that hundreds of Nahant voters were lying about their motives when, after years of public discourse culminating in vigorous debate at town meeting, they voted to spend potentially millions of dollars to take easements over land owned by Northeastern University for the express purpose of protecting its "natural, scenic, and open condition." That decision was wrong and this Court should reverse it on direct appellate review.

The errors of law in the decision below are legion and, if left standing, will blow up *Pheasant Ridge*'s careful balancing of interests. In disregard of *Pheasant Ridge*, the trial court did not even take into consideration voters' express statements at town meeting that they were acting to protect conservation, open space, and scenic values. Also in disregard of *Pheasant Ridge*, the trial court deemed evidence of Nahant's decades-long interest in conserving the entire small, mostly-undeveloped peninsula on which Northeastern's property sits to be irrelevant. And the court treated the maintenance of Nahant's scenery and aesthetics as an inherently improper purpose, even though respect for scenic values—particularly along the coast—is deeply embedded in the law. These and other errors led directly to the flawed decision below.

Pheasant Ridge and many other eminent domain cases came before this Court on direct appellate review. *See* 399 Mass. at 774.[1] It is enough to warrant direct appellate review in this case that the decision below is a novel and terrible precedent on numerous issues relating to eminent domain—finding bad faith under circumstances that have never supported such a finding before. So long as the decision below—including its award of more than $1 million in fee-shifting to

[1] *See also, e.g.*, *Cobble Hill Ctr., LLC v. Somerville Redev. Auth.*, 487 Mass. 249, 253 (2021); *Bos. Edison Co. v. Mass. Water Res. Auth.*, 459 Mass. 724, 725 (2011); *Giovanella v. Conservation Comm'n of Ashland*, 447 Mass. 720, 721 (2006); *Roberts v. City of Worcester*, 416 Mass. 804, 805 (1994).

Northeastern, which also was legal error—is allowed to stand, it will discourage public authorities from using their eminent domain powers for valid public purposes, while encouraging land owners to spuriously claim bad faith.

The public interest in prompt and final resolution of this controversy supports direct appellate review too. Having this Court, on the highest stage available, reaffirm the deference owed local democracy is one reason. And there is another: more than fifty years ago, Northeastern acquired the subject property from the federal government for free by saying it would be used, in part, as a wildlife preserve. For decades thereafter, Northeastern allowed Nahant residents to visit and enjoy parts of the property as an open, beautiful space adjoining a town park. But in 2018, Northeastern abruptly announced plans to build a huge, 55,000 square foot structure on the parcel, ultimately precipitating the town's effort to take the conservation easement using (in part) Community Preservation Act monies. If the decision below is not reversed finally and quickly, acres of meadow and woodland filled with wildlife could be destroyed, causing irreparable harm.

For these reasons, and the others discussed below, the Court should accept direct appellate review of the superior court's decision and reverse it.

PRIOR PROCEEDINGS

This action arises out of Nahant's efforts to preserve undeveloped land in a scenic area of town known as "East Point," which Northeastern intends to develop. App.409-410. The dispute between the town and its residents on the one hand, and the university on the other, gave rise to two lines of cases: this eminent domain case and a prior-filed public dedication case. The latter resulted in a final decision of the Appeals Court in favor of Northeastern earlier this year, which this Court declined to review.[2]

The proceedings relevant to this case are as follows. In 2021, Nahant's Board of Selectmen, acting pursuant to a supermajority vote by residents at the annual town meeting, issued an order of intention to take conservation and access easements over approximately 12 acres of Northeastern's property in East Point. App.81-93, 419. Pursuant to G.L. c. 80A, Nahant then filed a petition in the superior court to confirm its right to take the easements. App.72. Northeastern answered the petition by "impugn[ing] the validity" of Nahant's exercise of eminent domain and claiming, as relevant here, that Nahant's proposed taking "is being pursued in bad faith" "to stop a lawful development . . . for improper purposes." App.97-98.

[2] *See generally Nahant Pres. Tr., Inc. v. Ne. Univ.*, 104 Mass. App. Ct. 698 (2024), *review denied*, 495 Mass. 1107 (2025).

Following discovery, the parties cross-moved for summary judgment on the issue of Nahant's good-faith—that is, whether the intended taking is for a valid public purpose and lawful. App.102, 173. The superior court ruled for Northeastern, finding that Nahant's asserted conservation and open-space rationales for the taking, while valid public purposes, were pretextual and declaring the taking unlawful. App.459-460.

A single justice of the Appeals Court denied Nahant's petition for interlocutory review, App.67, and the superior court denied Nahant's motion for reconsideration, App.69. The superior court then granted in part Northeastern's motion for costs and indemnity under G.L. c. 80A, § 13, determining that that statute provides for fee-shifting, and entered final judgment against Nahant for over $1 million. App.469, 472.

Nahant timely noticed this appeal, *see* App.473, and now submits this petition for direct appellate review.

FACTS RELEVANT TO THE APPEAL

I. Nahant, East Point, and Northeastern.

Nahant is situated on a peninsula overlooking the Massachusetts Bay. App.132 ¶1. It is the smallest town in Massachusetts by land area, with its roughly 3,600 residents living on just over one square mile of land. App.132-133 ¶¶1-2.

Most of Nahant's land is residential, with less than 1% of the town used for industrial or commercial purposes. App.133 ¶4.

East Point is located on Nahant's easternmost tip, and its approximately 29 acres account for a meaningful percentage of Nahant's land area and remaining undeveloped open space. App.414. It is a costal, open area overlooking the Atlantic Ocean, containing beaches, an open meadow, woodlands, cliffs, and other shoreline:



See App.297. The area is rich with wildlife, serving as an important habitat for several species of birds, fish, and crustaceans. *See e.g.*, App.211-212. Over 180 species of birds have been observed there. App.235.

East Point's acreage is split between Northeastern and Nahant, with Northeastern owning about 21 acres and Nahant the rest. App.414-414. Northeastern's parcel in East Point is outlined in red in the image below:



App.295.

On its portion of East Point, Nahant established Henry Cabot Lodge, Jr. Park, commonly known as "Lodge Park." Lodge Park is a public open space, protected by Article 97 of the Amendments to the Massachusetts Constitution (Art. 97), situated to the very east of the peninsula. App.141-142 ¶51. As pictured above, Lodge Park offers a "sculpted rolling meadow," which "descends to rugged and picturesque rock ledges." *E.g.*, App.211.

Northeastern's parcel includes structures left over from a former military base, the largest of which sits buried underground and is known as the Murphy Bunker or Murphy Battery. App.135-136 ¶¶16-18. The university uses eight acres on the west end of its parcel for its Marine Science Center ("MSC"), the focal point of which is the Edward's Laboratory. App.135-136 ¶¶12-16. The rest of the parcel is undeveloped land, which Northeastern allowed Nahant residents to use for decades

for "walking, jogging, birdwatching, and viewing the magnificent scenery." App.136-137 ¶18; App.211-212.

II. Nahant and Northeastern have long valued East Point for its ecology, open space, and scenic beauty.

A. Nahant and Northeastern both acquired their East Point properties predominantly to preserve the area in its natural state.

Nahant and Northeastern have not always owned East Point. Before World War II the area contained private residences. App.209. In 1941, the federal government acquired East Point by eminent domain and established a military base. App.136-137 ¶22.

The government operated that base until the early 1960s, when it decommissioned the facility and offered East Point for sale. App.137 ¶23. Nahant applied to purchase the property to "provide residents of the community with . . . essential open space." App.242. Nahant explained "we feel that this, the last remaining open area in the Town of any appreciable size, should be preserved for recreational purposes." *Id.* Nahant also observed that the property was important for its "natural beauty" and "spectacular views." App.241-242. Ultimately, however, Nahant voters did not appropriate the funds necessary to purchase the property. App.137 ¶27; App.316-335.

While not buying the property itself, Nahant still sought to accomplish its conservation goals through other means. As particularly relevant to the current

situation, the town's Conservation Commission observed that, so far "as conservation aspects are concerned (namely, the preservation of the unusual beauty of this striking bit of unspoiled coastline)," it would be in the town's best interest to "have the property pass to an educational institution." App.262. The Conservation Commission acted on that observation, bringing East Point's availability to Northeastern's attention. App.250.

After learning of the East Point opportunity thanks to the Nahant Conservation Commission, Northeastern applied to acquire the property. The university told the federal government it wanted the land, in part, "to make it a wildlife preserve." App.252. "Only in this way," Northeastern said, could East Point's "unusually diverse fauna and wide variety of littoral habitats" "be protected adequately." *Id.* In response, the federal government transferred most of East Point to Northeastern in 1966 at no cost, reserving about eight acres for itself. App.138-139 ¶¶34-35; App.246, 265.

About ten years later, the federal government put those eight acres up for sale and both Nahant and Northeastern tried to acquire it. App.139 ¶¶37-38. Nahant again proposed using the land for "[p]assive recreation," perhaps as a "scenic overlook," and as a means to further the "preservation of open space in the Town." App.277. Northeastern explained that it wanted the land so that it could, in part, "protect[] . . . the area and its preservation in the natural state," including its

"undisturbed shoreline" and "marine fauna and flora." App.268-271, 228. Ultimately, the federal government sold the eight acres in 1975 to Nahant. App.140 ¶41; App.280-282.

B. Northeastern and Nahant preserve East Point in its natural, open state for decades.

After Northeastern acquired its parcel on East Point, it for decades maintained the majority of it "as a wildlife sanctuary," App.136 ¶21, and an "undeveloped ecological study area," App.211, while lauding "the biodiversity of [East Point's] habitat," App.238. *See also* App.145 ¶65. Northeastern did not pursue any major development projects on the land for more than four decades—no permanent structure has been built on or east of the Murphy Battery since Northeastern acquired the property in 1966. App.135 ¶17. And Northeastern permitted "many visitors" on its property to enjoy its open space, beauty, and wildlife preserve, including by allowing Canoe Beach to be used for "recreation." App.237, 224.

The land Nahant purchased from the federal government in 1975 was (as noted above) turned into Lodge Park. App.140 ¶¶41-43. Nahant undertook significant efforts "to restore [its portion of] East Point to a place of natural beauty," including by filling in "[t]he unsightly and hazardous silos" of the former military base and landscaping the area "to blend with the natural topography." App.215.

Since then, Nahant has extolled "[t]he natural beauty of East Point, with its commanding ocean view," and has expressed appreciation for how the area

"enhances the quality of life for [its] residents . . . while providing a habitat for wildlife." App.215. For example, in 1989, Nahant observed in its "Open Space Plan" that "Nahanters love the outdoors and make frequent use of it," noting (*inter alia*) that 90% of surveyed residents said they visited East Point often. App.201, 205. The Open Space Plan acknowledged that open space was limited in town and therefore recommended "taking some action to protect" East Point (among other areas) "as open space/recreation, whether by establishing a special zoning classification to protect open space, by placing conservation restrictions on them, or by some other measure." App.203. This recommendation was consistent with the views of 80% of Nahant residents, who agreed that the town should place more emphasis on "protecting open space." App.202. Nahant residents also expressed a need for "conserving wetlands; wildlife; and natural areas" like East Point. *See id.*; *see also* App.201 (noting "[a]n aquatic community type known as Marine Rocky Shore has been documented on Northeastern University's property" and expressing that this area, and others, are "worthy of protection").

Two years later, in 1991, the Nahant town meeting placed the entirety of East Point, including Northeastern's parcel, within a natural resource zoning district. App.149-150 ¶¶82-85; App.286. The zoning bylaw explained that the change was meant to further "[t]he preservation and maintenance of protected wildlife and wetlands resource areas and habitats"; to "preserve and increase the amenities of the

Town and foster enjoyment of its remaining natural resources"; and to "conserve natural conditions, wildlife and open space for the . . . general welfare of the public.'" App.441-443. Since 1991, the bylaw has prohibited non-conservation development in East Point (except to the extent required by the Dover Amendment, as a 2019 amendment to the bylaw implicitly acknowledges). *See id.*

In its 2000 Open Space Plan, Nahant touted East Point as a "windswept grassy promontory offering an unrestricted view of the Boston skyline to the southwest and the expanse of open ocean to the east." App.210; *see* App.213 (describing East Point as "a scenic gem"). The Plan observed that a "good portion of East Point . . . is occupied by the Northeastern University Marine Science Center . . . which maintains much of the land as an undeveloped ecological study area" that residents visit "regularly for walking, jogging, birdwatching, and viewing the magnificent scenery." App.211-212. The Plan went on to say that "East Point is a vital resource, both as a natural habitat for wild plants and migrating birds and as a passive recreational area for all the Townspeople." App.212. Protection of such "existing resources," it continued, was "the single most compelling issue facing planning for open space." App.214.

Several years later, the town's commitment to the preservation of East Point was reiterated in the 2008 Open Space Plan, which recommended that Nahant focus on important "buffer areas" "surrounding East Point" and impose "conservation

restrictions [to] help to increase the protections for open space in Nahant." App.218; *see* App.444-445.

The town's next Open Space Plan, published in 2016, noted that one area of Northeastern's parcel, known as Canoe Beach, is a "beautiful area" that could "be further improved" both as to its public "usability" and its "aesthetics." App.403. That plan recommended that the town "should consider engaging Northeastern University to see if a dune grass restoration plan could be developed across the beach," and commented that "consideration should be given to install protective, rope fencing" in the area. App.404.

C. In 2018, Northeastern proposes significant development on its parcel for the first time in decades.

In 2018, after decades during which it maintained much of its parcel on East Point as an undeveloped wildlife preserve and open space, Northeastern announced plans to significantly expand its East Point campus. Specifically, it proposed constructing a new, 55,000 square foot building—what would be the largest building in all of Nahant—on and to the east of the Murphy Battery, much closer to Lodge Park than the existing MSC. App.150-151 ¶¶88-92. The building would be part of a proposed Coastal Sustainability Institute ("CSI") campus, which also would include a new 125-vehicle parking lot and a new "geothermal wellfield" occupying over one acre of land. App.150-151 ¶89.

Although Northeastern has refined its CSI plan over time, the proposed project still presents several, irreversible environmental impacts. According to the Massachusetts Executive Office of Energy and Environmental Affairs ("EEA"), the project would, among other impacts, result in "the alteration of 4.1 acres of land including the creation of 1.71 acres of new impervious surface." App.231.

III. Nahant residents predominantly oppose Northeastern's development of East Point based on conservation and open-space concerns.

Nahant town officials and residents immediately raised a host of concerns as Northeastern announced and refined its proposed CSI plans.

Many Nahant residents raised concerns about the project's environmental impact. In 2018, over 1,600 residents—just under half of Nahant's entire population—signed a citizen petition urging Northeastern to consider whether the CSI project would be "environmentally conducive to the conservation land on which" it would sit. App.290. These concerns were echoed at the 2018 annual town meeting, with one resident warning "[w]e do not want the Board of Selectmen or any town agency to pass anything in this town that's going to favor Northeastern University to take our green lands, our blue lands and our wetlands away from the town of Nahant people." App.303. Nahant's Board of Selectmen articulated these concerns in a 2018 letter to Northeastern, expressing a concern (among others) that the development could "eliminate bird and wildlife habitats." App.291.

These early environmental concerns were coupled with worry about the project's impact on East Point's scenic beauty. Nahant's Board of Selectmen, for instance, stated in the same 2018 letter that the project would detract from Nahant's "scenic residential community." App.291. Residents likewise were concerned that East Point's development would negatively impact "the beauty, and the future and the history of this town," and expressed opposition to allowing Northeastern "to take away the history and the beauty and the sunrises coming over Eastern Point." App.303. Still other Nahant residents raised concerns over the fiscal impact to the town—that the project would result in increased infrastructure and governance costs that the small town's taxpayers would be unable to bear. App.291-292.

In 2019, EEA received over 500 comments on the proposed CSI project, a "majority" of which "express[ed] significant concern with siting the facility on East Point" given its "impacts to open space, wildlife and municipal infrastructure." App.227; App.153 ¶99.

In 2020, Nahant's Board of Selectmen issued a statement recommending using eminent domain to take a conservation easement on Northeastern's parcel, in order to prevent negative "environmental impact to East Point" and to "permanently save the open space, woodlands, beaches and meadows" in the area. App.305. The Board stated that "[p]rotecting the 'Wildlife Preserve at East Point' for Nahant in perpetuity is essential" to the environment, and would help "mitigate the impact of

heat, storms, carbon emissions, and habitat loss." App.306. It explained that the "only goal" of the eminent domain proposal was "to save the Wildlife Preserve." App.307. "While the cost of preserving the Wildlife Preserve at East Point is significant," the Board continued, "we know we must save it for future generations of Nahant residents, open space, wildlife, conservancy and safe-keeping." App.309.

An analysis conducted in 2020 determined that it actually would cost taxpayers less to take a conservation easement by eminent domain than if Northeastern's CSI project moved forward. App.312-313. Even then, however, the Board of Selectmen remained focused on "the incredible beauty of this special place" that "should be preserved for future generations of people, birds, and animals." App.313. The Board reiterated that "Nahant has very limited open space" and warned residents that, "unless you use your vote to prevent it," the open space in East Point would be lost. *Id.*

IV. Nahant voters overwhelmingly authorize the taking at the 2021 annual town meeting.

The question whether to take a conservation easement over Northeastern's East Point property was submitted to Nahant residents at the 2021 annual town meeting. Article 22 of the meeting warrant asked voters "to authorize the Board of Selectman to acquire, by gift, negotiated purchase, eminent domain taking (pursuant to c. 80A exclusively), or otherwise," a conservation easement over portions of the Northeastern East Point parcel, "for open space, recreation, conservation and/or

historic preservation purposes." App.338. As the Board of Selectmen explained to Nahant voters, the conservation easement would still allow Northeastern to operate the MSC as it historically had been, and would allow Northeastern access to the easement areas for "non-conflicting, non-invasive ecological studies and the like." App.307.

Discussion of Article 22 at the town meeting was dominated by concerns over protecting East Point's environment, its beauty, and its open space. In opening discussion on the question, for example, a member of the town's Finance Committee emphasized that "East Point is beautiful" and that it's "a very special place." App.344-345. A selectman who spoke in favor of the taking explained that "the reason to vote yes is that you get a twelve-acre ocean front park in conservation land without roads, without lights, without five acres of eighty geo thermal wells, and without the biggest building in town." App.349. "[I]f we don't save this land as a conservation area," he warned, "the bulldozers are coming, and they're going to strip that land bare, taking with it fifty years of tree growth and birds' nests and everything else." App.354.

Discussion among residents at the town meeting—both proponents of the taking and opponents—was laser focused on the proposed easement's benefits for conservation, open space, and scenic beauty. One resident explained that voting yes on the taking is "really just insisting that Northeastern live up to what it wrote in a

1965 report about the property," alluding to Northeastern's proposal to acquire the land from the federal government to "make it a wildlife preserve," which were "[w]ords that everybody lived by for fifty something years." App.373-374. Another explained that "East Point is a beautiful place that has taken fifty-five years to recover its current wildlife sustaining state"; she pleaded with her fellow residents: "if the choice is to save the beautiful, natural area of East Point or destroy it, I ask you to save it." App.381, 385. Numerous speakers in favor of the taking described their desire to conserve the area for its unique environment, its open space, its scenic views, or similar reasons. *See, e.g.*, App.349, 354, 361-363, 333-334, 380, 385. Even residents who spoke against the taking did not disagree that East Point is an environmentally rich, open, and beautiful area that should be preserved; rather, they disputed whether Northeastern's project would actually diminish the site's value. *See, e.g.*, App.355 ("Its green, its lush, and none of that is about to be destroyed."); App.365, 391, 397.

At the close of the debate at town meeting, more than 900 Nahant residents—about 25% of the town's entire population—voted, with a supermajority of 641 voting to approve the taking. App.400. Town meeting also voted in favor of allocating Community Preservation Act funds to help finance the taking. App.160-161 ¶137. Those funds would not have been available if the property, in the

assessment of the Nahant Community Preservation Committee, was not suitable for the preservation of open space. *See* G. L. c. 44B, § 5.

Nahant's Board of Selectmen then issued an order of intention to take conservation and access easements on Northeastern's East Point parcel. The order of intention proposed to take two conservation easements and an access easement over approximately 12 acres of the property. App.420-421. It stated that Nahant's purpose for the taking is to preserve East Point in its "natural, scenic, and open condition." App.421. The order also stated that the taking would benefit Nahant because it would preserve open space, protect the scenic nature of East Point, and would be protective of wildlife. *Id.*

V. The superior court finds that Nahant's stated rationales for the taking were pretextual and that Nahant had pursued the taking in bad faith.

Nahant petitioned the superior court under G.L. c. 80A to confirm the taking, in response to which Northeastern impugned the taking's validity. The parties eventually cross-moved for summary judgment on the question whether Nahant had pursued the taking in good-faith. *Supra*, p. 11. Northeastern also alleged in the litigation that Nahant was pursuing the taking to benefit private parties rather than the public, but that issue was not reached in the superior court's summary judgment decision. App.422.

Northeastern's principal argument was that a taking in response to an announced project that the property owner has a right to build is *per se* unlawful.

App.179-183; App.165-169. According to Northeastern, Nahant had actually conceded this in its own motion papers. App.165-169. Nahant responded that it had conceded no such thing. App.171-172; App.192-194. Nahant explained that a desire to stop development does not render a taking inherently improper; rather, if there are proper public purposes for wanting to stop the development, then the taking is valid. App.171-172; App.192-194. In reply, Northeastern reiterated its legal argument, asserting it was "fatal" to Nahant's case that the taking was in response to the university's announced CSI project. App.195-197.

The superior court granted Northeastern's motion for summary judgment and denied Nahant's, concluding that Nahant's stated conservation rationales were pretextual. App.459-460. The court framed its reasoning under this Court's decision in *Pheasant Ridge*. App.425. Under *Pheasant Ridge*, determining whether a taking was made in bad faith involves consideration of, *inter alia*: (1) whether there is "any prior town interest in the site or its neighborhood," (2) whether "[t]he manner in which the town dealt with the attempted acquisition of the subject parcel was not in accord with its usual practices," and (3) whether there was "any consideration by any town agency or the town meeting itself of the merits or the relative merits of the acquisition of the site for the purposes stated." 399 Mass. at 778-79.

Applying that framework, the superior court first considered whether some of Nahant's stated reasons for its exercise of eminent domain—*i.e.*, "the preservation

of . . . open space and conservation purposes"—are facially valid public purposes. App.432-433. The court had "little difficulty" finding that they are. App.386. The court also considered whether there was anything irregular about the process Nahant followed, and found nothing. App.434-435.

The court then ruled that Nahant had only a marginal case with respect to the "prior town interest" factor, finding that Nahant lacked "the type of longstanding, comprehensive municipal interest that would summarily preclude a finding of bad faith. App.447. In the court's eyes, Nahant had demonstrated only "some prior interest" in East Point, as evidenced by its attempt to purchase all of the area in the 1960s, and the 2008 Open Space Plan's discussion of "preserving East Point and surrounding areas for passive recreation and conservation purposes." App.438-440, 444-445. The town's other Open Space Plans, the court reasoned, were insufficiently particular to conserving the land which Northeastern intended to develop as part of the CSI project. App.443-445. The court likewise found that Nahant's inclusion in 1991 of all of East Point in a natural resource zoning district did not help its case, pointing to the zoning bylaw's implicit acknowledgement of Northeastern's rights under the Dover Amendment. App.441-443.

The superior court then addressed statements made by town officials and residents during the period 2018 to 2021. App.447-459. The court initially and properly rejected Northeastern's categorical argument that concern over a project's

fiscal impact on a town (*e.g.*, due to increased infrastructure needs) is a *per se* improper purpose. App.449.

The court agreed with the university, however, that Nahant's concerns over the project's scenic and fiscal impacts, not its environmental or open-space impacts, were the "dominant purposes" for the taking, and that Nahant was therefore acting in bad faith. App.450-459. In reaching this conclusion, the superior court never addressed *any* of the statements by town officials and residents at the 2021 town meeting that actually approved the taking. Nor did the court focus on the statements by town officials and residents in the preceding years that mentioned environmental or open-space concerns. Instead, the court highlighted statements by town officials and residents, in written documents and forums other than the 2021 town meeting, complaining that Northeastern's project "would not be aesthetically pleasing" and would require costly upgrades to the town's infrastructure. *E.g.*, App.454-457.

In this section of the opinion, the court routinely glossed over statements by the very same speakers warning about the project's potential conservation and open-space impacts. As one glaring example, the court quoted from the Board of Selectmen's 2018 letter to Northeastern in part as follows—with the bolding as original in the superior court's decision:

> **The proposed 60,000 sq. ft. building, with its roadways and lighting is not a fit for our scenic residential community.** The construction has the potential to eliminate bird and wildlife habitats. **A new entrance into the Marine Science Center will alter traffic flow.**

App.453. Based on the selection of pre-2021 town meeting statements that the court emphasized, it concluded that "the record evidence clearly shows that the Town's dominant reason for the taking is not to preserve" East Point. App.459.

Instead, the court concluded that "the record evidence clearly shows that the Town's dominant reason for the taking" is "to stop a development project that Northeastern has the right to pursue." App.459. The court repeatedly flagged statements by speakers that they wanted to "stop" the project as facial evidence of bad faith, without considering *why* the speakers wanted to do so. App.450-459. As one example, the court emphasized a 2018 statement by a then-sitting town selectman that he was "100% against" the project. App.451. But the court did not mention the selectman's explanation that he wanted to "preserve the beauty and peacefulness" of a "wonderful and very special spot on Earth." App.407-408.

As particularly relevant to this appeal, the superior court also reached its decision by treating the preservation of Nahant's scenic value as an improper purpose. For example, the court consistently highlighted statements by speakers prior to the 2021 town meeting complaining of the CSI project's visual impacts as evidence of an improper purpose. *See*, *e.g.*, App.451 n.29, 453-455. And, based on

those statements, the court concluded that Nahant voters had acted in bad faith because, in part, they wanted to preserve the scenic value of their town. *See* App.450 ("the Town's dominant reason for the taking is to block Northeastern from pursing the Project (or any development plans) because the size of the proposed new building is . . . not a fit for the scenic residential community") (internal quotation marks and brackets omitted); App.459 ("the dominant reason for the taking is to stop the Project because, *inter alia*, it would detract from the scenic, residential nature of the Town") (internal quotation marks omitted).

Based on this reasoning, the superior court ruled "as a matter of law that Northeastern has proven its pretextual bad faith taking affirmative defense[.]" App.460. And, after determining that G.L. c. 80A, § 13, provides for fee-shifting, the court awarded Northeastern over $1 million in costs and fees. App.469, 472.

ISSUES PRESENTED

1. Whether the superior court committed legal error in finding a pretextual, bad-faith taking by a town without considering statements at the town meeting at which the taking was approved?

Nahant raised and preserved in, *e.g.*, opposition to Northeastern's motion for summary judgment and elsewhere. *See, e.g.*, App.192-194; *see also infra*, p. 33.

2. Whether the superior court committed legal error in applying *Pheasant Ridge*'s "prior interest" factor?

Nahant raised and preserved this issue in its motion for summary judgment and elsewhere. *See, e.g.*, App.128-129.

3. Whether the superior court committed legal error by treating the desire to preserve a waterfront community's scenic nature as an improper public purpose?

Nahant raised and preserved this issue in its motion for summary judgment and elsewhere. *See e.g.*, App.194 & n.4.

4. Whether the superior court committed legal error by interpreting G.L. c. 80A, § 13 to provide for fee-shifting?

Nahant raised and preserved this issue in briefing on the subject of fee-shifting. *See, e.g.*, App.462-464.

ARGUMENT ON THE ISSUES

I. The superior court erred in failing to consider statements made during the 2021 town meeting.

Courts will not assume lawmakers were acting to advance secret, illicit motives if there was some possible valid reason for their legislative choices. Thus, when it comes to a statute, courts ask whether there was some rational basis for it, not whether legislators actually supported the law on that basis. *Rushworth v. Registrar of Motor Vehicles*, 413 Mass. 265, 270 (1992). The same holds true when it comes to zoning bylaws enacted at town meeting, since zoning is a "legislative act . . . carrying a strong presumption of validity." *Durand v. IDC Bellingham, LLC*, 440 Mass. 45, 50-51 (2003).

The "exercise of eminent domain" also is "legislative in character," *Abuzahra v. City of Cambridge*, 101 Mass. App. Ct. 267, 275 (2022), and so this Court appropriately warned in *Pheasant Ridge* that courts "should not easily attribute improper motives to a town, *and to its citizens voting at a town meeting*, if there were valid reasons that would have supported the town's action." 399 Mass. at 777 (emphasis added). The Court set out an exacting legal standard under which it is "not easy to prove" a town took property "in bad faith," "particularly . . . where the significant event is *an affirmative vote . . . of the persons voting at a town meeting*[.]" *Id.* at 776 (emphasis added). In short, courts must be extraordinarily careful before they impugn the motives and the honesty of an entire town electorate.

More than 900 Nahant voters—about a quarter of the town's entire population—voted by a more than two-to-one margin to approve the challenged taking at the 2021 town meeting, and also to use Community Preservation Act funds (in part) to pay for the taking. That vote followed a vigorous debate, with numerous speakers—both pro and con—acknowledging the importance of East Point's "natural, scenic, and open condition." *See supra*, pp. 22-25. Issues of conservation, open space, and scenic value also were raised, repeatedly, during the period between Northeastern's announcement of the project in 2018 and the 2021 town meeting. *See supra*, pp. 20-22. And all of that discussion followed *decades* during which town officials and residents were lauding East Point's scenic beauty, environmental value,

and contribution to open space, and town residents were going onto Northeastern's parcel for those very purposes. *See supra*, pp. 11-19. This is not remotely a situation like *Pheasant Ridge*, in which the "town meeting voted to take the property" "without *any* consideration . . . of the merits or the relative merits of the acquisition of the site for the purposes stated." 399 Mass. at 780 (emphasis added). The very opposite is true here.

Nahant put the entire transcript of the 2021 town meeting into the summary judgment record. *See* App.159-160 ¶¶133, 182 (citing Exhibit 78). It drew the court's attention to the transcript in briefing and at argument, including in arguing that "most of the public comments and actions of elected and appointed officials and citizenry alike are about saving the treasured public resource that is East Point." App.192-193 (citing, *inter alia*, "Town SoF ¶¶ 133-137," which discuss the 2021 town meeting and cite the transcript); *see also* App.478-439 (in colloquy triggered by court's question "So what is the exact public use that the Town is asserting that the citizens voted on?," pointing to "a transcript of the discussion at [Exhibit] 78"). Nahant distinguished itself from *Pheasant Ridge* based on the extensive public discourse around preserving East Point. App.480-482. Yet the superior court found that the town's voters acted in bad faith without *once* mentioning any statement by any speaker at the 2021 town meeting. The court's analysis of bad faith instead focused on isolated statements by town officials, mostly from 2018. App.450-455.

The superior court's failure to address the discussion at the 2021 town meeting was legal error. If the court had done so, it would have needed to find that the supermajority of hundreds of voters who approved the taking were not acting in bad faith.

II. The superior court erred in its application of *Pheasant Ridge*'s prior-interest factor.

As the Court said in *Pheasant Ridge*, "[a]lthough not controlling, the absence of any prior town interest in the site *or its neighborhood* is instructive on the matter of good faith." 399 Mass. at 778 (emphasis added).

Taking into account the broader "neighborhood" in considering the "prior interest" factor makes sense. The bottom-line question is whether voters acted pretextually when taking a conservation easement on a parcel. It is plainly germane to that question whether town officials and residents previously lauded the conservation and open-space value of the neighborhood generally, or a similar or adjoining parcel in the same neighborhood. Likewise, if a town previously established a scenic park in a neighborhood, then voters unsurprisingly may want to avoid large, unsightly developments on adjoining parcels. A court scrutinizing a taking for bad faith misses the forest for the trees when it nitpicks the historical record to determine whether past statements and actions involved the precise parcel in question, disregarding those that did not.

That is exactly the legal error the superior court made here. In addition to evidence specifically concerning the Northeastern parcel, Nahant introduced reams of evidence concerning the town's decades-long interest in preserving East Point generally for its conservation, open space, and scenic value. East Point comprises only 29 acres. Nahant originally wanted to obtain all of it for conservation and open-space purposes in the 1960s, and when that failed steered Northeastern to acquire the land in hopes Northeastern would preserve it. Nahant's parcel, including Lodge Park, and Northeastern's parcel are adjoining. For decades, Northeastern allowed Nahant residents to wander from Lodge Park onto the undeveloped portions of its property. As recounted above, Nahant's Open Space Plans, natural resources zoning district bylaw, and other documents for decades emphasized the importance of "East Point" generally, including at times the Northeastern parcel specifically, to the town. *Supra*, pp. 16-19.

In finding that Nahant had not shown a "longstanding, comprehensive, municipal interest" in preserving the undeveloped land on Northeastern's parcel, however, the superior court flyspecked documents to determine whether they specifically concerned the land Northeastern wanted to develop. App.443-447. For example, the court thought the 2016 Open Space Plan was not indicative of an interest in protecting East Point, since it discussed only part of Northeastern's property, Canoe Beach. App.445. That makes no sense—Nahant's interest in

preserving Canoe Beach for the enjoyment of its residents has obvious relevance to whether those residents, voting in town meeting, had a non-pretextual interest in avoiding a massive new building just inland from the beach.

As another example, the court rejected Nahant's argument that "[t]he existence of Lodge Park . . . on the adjoining land," and the longstanding ability of Nahant residents to move between Lodge Park and Northeastern's property, "is sufficient for this Court to find prior public interest in East Point." App.446. The court found that argument "misplaced," and even ruled that evidence Nahant residents had entered the Northeastern parcel from Lodge Park for decades was "*irrelevant*" to determining voters' good faith. *Id.* (emphasis added). Evidence concerning Lodge Park and Nahant residents *actually using* the Northeastern parcel is not irrelevant, but goes *directly* to whether voters' interest in preserving the Northeastern parcel was genuine.

The superior court's myopic focus in applying the "prior interest" factor was legal error. This was not remotely a situation in which "absence of any prior town interest in the site or its neighborhood" might be "instructive on the matter of good faith." *Pheasant Ridge*, 399 Mass. at 778.

III. The superior court erred in treating Nahant's interest in scenic conservation as an improper public purpose.

In finding bad faith, the superior court reasoned that preserving Nahant's beauty as a scenic, waterfront community was *not* a valid public purpose. *See supra*, pp. 29-30. But preserving scenic values has long been considered a valid purpose—one with obvious connections to conservation and open space.

Our state constitution declares that scenic value is a "public purpose":

> The people shall have the right to . . . the natural, *scenic*, historic, and *esthetic* qualities of their environment; and the protection of the people in their right to the conservation, development and utilization of the agricultural, mineral, forest, water, air and other natural resources is hereby declared to be a *public purpose*.

Art. 97 (emphasis added); *see also Blair v. Dept. of Conservation and Recreation*, 457 Mass. 634, 640 (2010) ("enjoyment of . . . 'natural, scenic, historic, and esthetic qualities of [the] environment' are a 'public purpose'").

As particularly relevant here, numerous statutes—federal and state—recognize the public value of coastal aesthetics. The Federal Coastal Zone Management Act, for example, explains that the "esthetic values in the coastal zone . . . are essential to the well-being of all citizens." 16 U.S.C. § 1451(e). It is national policy to encourage states to protect "esthetic coastal features." *Id.* § 1452(2)(F). Massachusetts law recognizes "the rights in tidelands of the inhabitants of the

commonwealth" (G.L. c. 91, § 2), with associated regulations protecting "objects of scenic, historic or cultural importance to the waterfront" (310 C.M.R. § 9.51(2)(b)).

East Point occupies a striking peninsula jutting into Massachusetts Bay. Northeastern's parcel has shoreline along both its north and south edges and is marked by beaches, cliffs, and other natural features. That parcel adjoins the town's parcel, which is maintained as a public park comprising rolling meadows. East Point is extraordinarily prominent in Nahant, visited by many residents and viewed by countless more. It was reasonable for Nahant voters to be concerned about the impact of a massive new building and other structures on the scenic value of their waterfront community.

The superior court got things backwards by treating Nahant's desire to protect the town's scenic value as an improper purpose and therefore erred as a matter of law.

IV. The superior court erred in awarding fees under G.L. c. 80A, § 13.

The superior court awarded Northeastern more than $1 million in fee-shifting under G.L. c. 80A, § 13. App.472. This was legal error.

Under the American Rule fee shifting presumptively is not available. Section 13 does provide for limited recovery to a landowner who has successfully impugned the validity of a taking, but it does not include fee shifting. Under § 13, "[i]f the petition" by a government to confirm a taking "is dismissed," then "costs, as in

actions at law, shall be awarded to the respondents, in addition to indemnity for *loss and damages* as provided in section eleven." G.L. c. 80A, § 13 (emphasis added). Section 11, which is cross-referenced, provides that if a proceeding is discontinued under certain circumstances, then "any person who has *suffered damage or loss or been put to expense by the proceedings* shall be entitled to recover indemnity in full by order of the court." *Id*. § 11 (emphasis added).

As can be seen, § 11 refers to "damage or loss or been put to expense by the proceedings," whereas § 13 refers only to "loss and damages as provided in section eleven." The superior court, which construed "put to expense by the proceedings" in § 11 to include fee-shifting, thought it was "illogical" that fee-shifting would be available under § 11 but not under § 13. App.466-467. Whatever the superior court's view of sound public policy, the Legislature's decision to omit "expense" in § 13 is an unambiguous difference in statutory language. "Ordinarily, where the language of a statute is plain and unambiguous, it is conclusive as to legislative intent." *Peebles v. JRK Prop. Holdings, Inc.*, 496 Mass. 389, 393 (2025) (internal citations omitted). There is nothing "absurd" or "unworkable" about the Legislature deferring to the American Rule in contested proceedings in which fee-shifting under § 13 might risk swamping municipal budgets.

REASONS TO GRANT DIRECT APPELLATE REVIEW

The Court should grant direct appellate review because this case presents "novel questions of law which should be submitted for final determination to the Supreme Judicial Court," and "questions of such public interest that justice requires a final determination by the full Supreme Judicial Court." Mass. R. App. P. 11(a) This Court frequently has found these criteria satisfied in cases involving eminent domain—indeed, *Pheasant Ridge* was decided on this Court's direct review—and this case is no exception. *See supra*, p. 8 & n.1.

To start, direct appellate review is warranted because, as outlined above, the superior court departed from this Court's precedent and made new law in at least four respects. First, it determined that Nahant's voters at the 2021 town meeting took an easement over Northeastern's property on a pretextual basis without ever considering what town officials and voters said at the town meeting, focusing instead only on statements made outside of the town meeting and, in most instances, years before. Second, the court held that evidence of a town's interest in the broader neighborhood is "irrelevant" and reliance on it to meet the prior interest factor "misplaced," which again is inconsistent with *Pheasant Ridge* and something no court has done before. Third, it treated the preservation of a seaside community's scenic value as an improper purpose, which no court previously has done. And fourth, it entered a massive award of attorney's fees against the town based on its

own, novel view that the Legislature's decision not to provide for fee-shifting under G.L. c. 80A, § 13 was "illogical."

Without guidance from this Court on each of these issues, the superior court's decision will profoundly change Massachusetts law by making it far easier for property owners to prove bad faith when challenging municipal takings of land for conservation and open-space purposes. Now, unless a town has repeatedly expressed a prior interest in preserving the specific undeveloped parcel in question—even one that no one tried to develop for decades—any desire to protect it against newly announced development plans will be presumptively suspect. And a finding of bad faith can follow regardless of what was said at the town meeting approving the taking—even if, as here, the town meeting was dominated by a discussion of conservation issues.

By making it easier to prove bad faith, the superior court's decision will deter municipalities across the Commonwealth, and perhaps the Commonwealth itself, from taking conservation easements in the first place. After all, under the superior court's fee-shifting decision, attempting to take such easements could pose significant financial risks. Tiny Nahant was ordered to pay Northeastern over $1 million after losing this case. Small and cash-strapped communities will no doubt be deterred from taking conservation and open-space easements to benefit their

residents if they face such risks—and if, as in this case, the outcome is unpredictable because superior courts are departing from established legal norms.

There are at least two public interest issues at stake here too, each of which separately warrants this Court taking the case on direct appellate review.

First, respect for democracy matters. The superior court effectively ruled that the voters of Nahant, more than two-thirds of whom approved the taking after vigorous public debate, were lying about their reasons for the taking—that they were not actually taking the easement "for open space, recreation, conservation and/or historic preservation purposes." A court "should not easily attribute improper motives to a town, and to its citizens voting at a town meeting, if there were valid reasons that would have supported the town's action," *Pheasant Ridge*, 399 Mass. at 777, but that is precisely what the superior court did here.

The finding that Nahant voters were acting duplicitously stemmed only from the superior court's legal and factual errors. This case is not *Pheasant Ridge*, in which the vote approving the taking was rushed through with no real discussion of the claimed purposes. Here, the people of Nahant engaged in a protracted public discussion of the Northeastern parcel *for years*, then had a vigorous discussion of the taking at the 2021 town meeting, and only then voted to take an easement over the property. As noted, more than 900 people voted on the question—about 25% of Nahant's total population. That process should have been praised as local

democracy at its best. Instead Nahant voters were erroneously condemned as acting in bad faith. There is instructive value in having *this Court* be the one to overturn the flawed decision below.

Second, East Point itself must not be lost in all this. It is a rare bit of coastal land that has lain undeveloped for five decades, allowing the establishment and maturation of unique flora and fauna throughout. *See* s*upra*, pp. 15-16. Should it undergo development as this case grinds through potentially multiple rounds of appellate review, the ensuing damage to the area's conservation values may take further decades to remedy—if it is reparable at all. A quick and final resolution to this case is accordingly crucial to ensure that East Point's environment is not changed forever.

CONCLUSION

This Court has only rejected a town electorate's exercise of eminent domain once, nearly four decades ago, in *Pheasant Ridge*. This case should not have been the first since *Pheasant Ridge* to find a bad-faith taking by a town's voters. For the foregoing reasons, the Court should grant this application for direct appellate review and correct the error below.

August 28, 2025

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 16(k) of the Massachusetts Rules of Appellate Procedure, the undersigned counsel states that this application complies with the rules that pertain to its filing, including but not limited to Mass. R. App. P. 16(b), 16(e), 16(f), 16(h), 18, and 20.

This application was prepared using Microsoft Word in 14-point Times New Roman, a proportionally-spaced typeface, and its argument section contains 1,987 words.

Dated: August 28, 2025

/s/ Kevin P. Martin
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CERTIFICATE OF SERVICE

Pursuant to Mass. R. App. P. 13, I certify that I caused this Application for Direct Appellate Review to be served by email to the following counsel of record:

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Dated: August 28, 2025

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DAR No. _____
Appeals Court No. 2025-P-0963

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

TOWN OF NAHANT,
Plaintiff-Appellant,

v.

12.5 ACRES OF LAND+/- SITUATED IN NAHANT, MASSACHUSETTS,

and,

NORTHEASTERN UNIVERSITY,
Defendants–Appellees.

On Application for Direct Appellate Review of a Judgment of the Superior Court Department for the Trial Court (Essex, ss.)

APPENDIX TO APPLICATION FOR DIRECT APPELLATE REVIEW

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2177CV00936 Town Of Nahant vs. 12.5 Acres Of Land +/- Situated IN Nahant Massachusetts et al

- Case Type:
- Real Property
- Case Status:
- Closed
- File Date
- 09/16/2021
- DCM Track:
- F - Fast Track
- Initiating Action:
- Land Taking
- Status Date:
- 05/12/2025
- Case Judge:
- Karp, Hon. Jeffrey
- Next Event:
-

All Information | Party | Judgment | Event | Tickler | Docket | Linked Case | Disposition

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More Party Information

Nahant Preservation Trust
- Other interested party

Alias

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More Party Information

Judgments

Date	Type	Method	For	Against
05/12/2025	Judgment for Costs/Fees	After Judicial Finding	Northeastern University	Town Of Nahant

Events

Date	Session	Location	Type	Event Judge	Result
12/01/2021 02:30 PM	Civil A	SALEM-5th FL, CR H (SC)	Conference to Review Status	Karp, Hon. Jeffrey	Held as Scheduled
01/19/2022 02:00 PM	Civil A	SALEM-5th FL, CR H (SC)	Rule 16 Conference	Karp, Hon. Jeffrey	
02/02/2022 02:00 PM	Civil A	SALEM-5th FL, CR H (SC)	Rule 16 Conference	Karp, Hon. Jeffrey	Held as Scheduled
08/24/2022 02:00 PM	Criminal 1 - K	SALEM-5th FL, CR K (SC)	Final Pre-Trial Conference	Karp, Hon. Jeffrey	Not Held
08/24/2022 02:00 PM	Civil A	SALEM-5th FL, CR H (SC)	Final Pre-Trial Conference	Karp, Hon. Jeffrey	Not Held
10/14/2022 10:00 AM	Civil D	LAWRENCE-2nd FL, CR 3 (SC)	Final Trial Conference	Karp, Hon. Jeffrey	Not Held
10/31/2022 09:00 AM	Civil D	LAWRENCE-2nd FL, CR 3 (SC)	Jury Trial	Karp, Hon. Jeffrey	Not Held
12/14/2022 10:00 AM	Civil D	LAWRENCE-1st FL, CR 1 (SC)	Rule 56 Hearing	Karp, Hon. Jeffrey	Not Held
12/14/2022 02:00 PM	Civil D	LAWRENCE-1st FL, CR 1 (SC)	Conference to Review Status	Karp, Hon. Jeffrey	Held via Video/Phone
02/15/2023 02:00 PM	Civil B	NWBPORT-2nd FL, CR 1 (SC)	Conference to Review Status	Karp, Hon. Jeffrey	Not Held

Date	Session	Location	Type	Event Judge	Result
03/28/2023 02:00 PM	Civil B	NWBPORT-2nd FL, CR 1 (SC)	Conference to Review Status	Karp, Hon. Jeffrey	Held via Video/Phone
12/13/2023 03:00 PM	Civil B	NWBPORT-2nd FL, CR 1 (SC)	Conference to Review Status	Karp, Hon. Jeffrey	Not Held
01/24/2024 10:30 AM	Civil B	NWBPORT-2nd FL, CR 1 (SC)	Rule 56 Hearing	Karp, Hon. Jeffrey	Rescheduled
01/24/2024 02:00 PM	Civil B	NWBPORT-2nd FL, CR 1 (SC)	Rule 56 Hearing	Karp, Hon. Jeffrey	Rescheduled
01/26/2024 10:00 AM	Civil B	NWBPORT-2nd FL, CR 1 (SC)	Rule 56 Hearing	Karp, Hon. Jeffrey	Held - Under advisement
05/21/2024 02:00 PM	Criminal / Civil (Lawrence)	LAWRENCE-2nd FL, CR 3 (SC)	Conference to Review Status	Karp, Hon. Jeffrey	Held as Scheduled
07/23/2024 02:00 PM	Civil B	NWBPORT-2nd FL, CR 1 (SC)	Motion Hearing	Karp, Hon. Jeffrey	Not Held
08/02/2024 12:00 PM	Civil B	NWBPORT-2nd FL, CR 1 (SC)	Motion Hearing	Karp, Hon. Jeffrey	Held via Video/Phone

Ticklers

Tickler	Start Date	Due Date	Days Due	Completed Date
Service	09/16/2021	12/15/2021	90	05/12/2025
Answer	09/16/2021	01/14/2022	120	05/12/2025
Rule 12/19/20 Served By	09/16/2021	01/14/2022	120	05/12/2025
Rule 12/19/20 Filed By	09/16/2021	02/14/2022	151	05/12/2025
Rule 12/19/20 Heard By	09/16/2021	03/15/2022	180	05/12/2025
Rule 15 Served By	09/16/2021	01/14/2022	120	05/12/2025
Rule 15 Filed By	09/16/2021	02/14/2022	151	05/12/2025
Rule 15 Heard By	09/16/2021	03/15/2022	180	05/12/2025
Discovery	09/16/2021	09/30/2022	379	05/12/2025
Rule 56 Served By	09/16/2021	10/17/2022	396	05/12/2025
Rule 56 Filed By	09/16/2021	11/17/2023	792	05/12/2025
Final Pre-Trial Conference	09/16/2021	01/09/2023	480	05/12/2025
Judgment	09/16/2021	09/18/2023	732	05/12/2025
Status Review	02/02/2022	02/17/2022	15	04/17/2024
Under Advisement	01/26/2024	02/25/2024	30	04/16/2024
Status Review	04/17/2024	10/25/2024	191	08/06/2024
Status Review	08/02/2024	09/09/2024	38	09/29/2024
Status Review	09/29/2024	01/10/2025	103	05/12/2025
Status Review	02/28/2025	04/14/2025	45	05/12/2025
Review Appeals Filed	06/09/2025	08/20/2025	72	07/25/2025

Docket Information

Docket Date	*Docket Text*	File Ref Nbr.	*Image Avail.*
09/16/2021	Complaint electronically filed.	1	Image
09/16/2021	Civil action cover sheet filed.	2	Image
09/16/2021	Plaintiff Town Of Nahant's Motion to appoint special process server	3	Image

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
09/16/2021	Attorney appearance On this date James D Masterman, Esq. added for Plaintiff Town Of Nahant		
09/16/2021	Attorney appearance On this date James P Ponsetto, Esq. added for Plaintiff Town Of Nahant		
09/16/2021	Case assigned to: DCM Track F - Fast Track was added on 09/16/2021		Image
09/16/2021	Endorsement on Motion to appoint special process server (#3.0): ALLOWED		Image
09/17/2021	Case file images Cover Letter		Image
09/21/2021	ORDER: OF NOTICE TO THE ABOVE NAMED RESPONDENT:		Image
09/24/2021	Service Returned for 9/17/21 Defendant Northeastern University: Service accepted by counsel Kevin O'Flaherty, in lieu of formal service and posting, on behalf of Northeastern. The complaint was served via email. The order of notice was similarly served via email on him 9/22/21	4	Image
10/04/2021	Service Returned for Northeastern University by delivering in hand to Mr. Ward Capeci, person in charge at the Office of the General Counsel, Ralph Martin II, 716 Columbus Ave., Suite 378CP, Boston, MA, 02115 on October 1, 2021	5	Image
10/29/2021	Defendant Northeastern University's Notice of Rule 9E Motion to Dismiss	6	Image
10/29/2021	Attorney appearance On this date George A McLaughlin, III, Esq. added for Defendant Northeastern University		
10/29/2021	Attorney appearance On this date Kevin Patrick O'Flaherty, Esq. added for Defendant Northeastern University		
11/05/2021	The following form was generated: Notice to Appear Sent On: 11/05/2021 14:19:32 Notice Sent To: James D Masterman, Esq. Greenberg Traurig One International Place Suite 2000, Boston, MA 02110 Notice Sent To: James P Ponsetto, Esq. Greenberg Traurig, LLP One International Place Suite 2000, Boston, MA 02110 Notice Sent To: George A McLaughlin, III, Esq. The McLaughlin Brothers, P.C. One Washington Mall 16th Floor, Boston, MA 02108 Notice Sent To: Kevin Patrick O'Flaherty, Esq. Goulston and Storrs 400 Atlantic Ave, Boston, MA 02110-3333 Notice Sent To: 12.5 Acres Of Land +/- Situated IN Nahant Massachusetts No addresses available		
11/15/2021	Respondent Northeastern University's Motion to dismiss or alternatively stay proceedings and/or extend answer deadline	7	Image
11/15/2021	Opposition to motion to amend tracking order and related (B) opposition to motion to dismiss (A) Reply to Northeastern University's filed by Town Of Nahant	7.1	Image
11/15/2021	Reply/Sur-reply Respondent, Northeastern University's, reply to plaintiff, town of Nahant's, opposition to motion to dismiss	7.2	Image
11/15/2021	Certificate of Compliance Superior Court Rule 9C	7.3	Image
11/17/2021	Plaintiff Town Of Nahant's Motion for entry of default	8	Image
11/17/2021	Opposition to plaintiff's motion for entry of default and request for sanctions (respondent's) filed by Northeastern University	8.1	Image
11/17/2021	Reply/Sur-reply (A) reply to opposition to motion for entry of default and (B) opposition to request for sanctions Applies To: Town Of Nahant (Plaintiff)	8.2	Image
11/17/2021	Certificate of Compliance Superior Court Rule 9A	8.3	Image
11/17/2021	Rule 9A list of documents filed.	8.4	
11/17/2021	Plaintiff Town Of Nahant's Motion to amend tracking order	9	Image

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
11/17/2021	Town Of Nahant's Memorandum in support of motion to amend tracking order	9.1	
11/17/2021	Opposition to town of Nahant's motion to amend tracking order filed by Northeastern University	9.2	Image
11/17/2021	Reply/Sur-reply to Northeastern University's opposition to motion to amend tracking order and related (B) opposition to motion to dismiss	9.3	Image
11/17/2021	Certificate of Compliance Superior Court Rule 9A	9.4	Image
11/17/2021	Rule 9A list of documents filed.	9.5	Image
11/24/2021	Conference Memorandum concerning the law and scheduling issues surrounding Nahant's bad faith taking Applies To: Northeastern University (Defendant)	10	Image
11/30/2021	Proposed Filings/Orders Town of Nahant's Proposed Tracking Order	11	Image
11/30/2021	Defendant Northeastern University's PROPOSED Request for Order Regarding Scheduling	12	Image
12/01/2021	Event Result:: Conference to Review Status scheduled on: 12/01/2021 02:30 PM Has been: Held as Scheduled Comments: FTR "H" Hon. Jeffrey Karp, Presiding Staff: Jose Mejia, Assistant Clerk Magistrate		
12/02/2021	Scheduled: Judge: Karp, Hon. Jeffrey Event: Jury Trial Date: 10/31/2022 Time: 09:00 AM Result: Not Held		
12/02/2021	The following form was generated: Notice to Appear for Final Pre-Trial Conference Sent On: 12/02/2021 11:00:48 Notice Sent To: James D Masterman, Esq. Greenberg Traurig One International Place Suite 2000, Boston, MA 02110 Notice Sent To: James P Ponsetto, Esq. Greenberg Traurig, LLP One International Place Suite 2000, Boston, MA 02110 Notice Sent To: George A McLaughlin, III, Esq. The McLaughlin Brothers, P.C. One Washington Mall 16th Floor, Boston, MA 02108 Notice Sent To: Kevin Patrick O'Flaherty, Esq. Goulston and Storrs 400 Atlantic Ave, Boston, MA 02110-3333		
12/02/2021	The following form was generated: Notice to Appear Sent On: 12/02/2021 11:04:13 Notice Sent To: James D Masterman, Esq. Greenberg Traurig One International Place Suite 2000, Boston, MA 02110 Notice Sent To: James P Ponsetto, Esq. Greenberg Traurig, LLP One International Place Suite 2000, Boston, MA 02110 Notice Sent To: George A McLaughlin, III, Esq. The McLaughlin Brothers, P.C. One Washington Mall 16th Floor, Boston, MA 02108 Notice Sent To: Kevin Patrick O'Flaherty, Esq. Goulston and Storrs 400 Atlantic Ave, Boston, MA 02110-3333		
12/02/2021	Scanned Image: Jury Trial 10/31/2022 at 9:00 am Location: Lawrence-2nd FL, CR 3		Image
12/02/2021	Scanned Image: Final Pre-Trial Conference 08/24/2022 at 2:00 pm Location: Salem-5th FL, CR K		Image
12/02/2021	Scanned Image: Rule 16 Conference 01/19/2022 at 2:00pm Location: Salem-5th FL, CR H		Image
12/02/2021	Scanned Image: Final Trial Conference 10/14/2022 at 10:00 am Location: Lawrence-2nd FL, CR 3		
12/02/2021	Endorsement on Motion to Dismiss or alternatively stay proceedings and/or extend answer deadline (#7.0): Withdrawn in open court		Image

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
	Judge: Karp, Hon. Jeffrey		
12/02/2021	Endorsement on Motion for Entry of Default (#8.0): Withdrawn in open court Judge: Karp, Hon. Jeffrey		Image
12/02/2021	Endorsement on Motion to Amend Tracking Order (#9.0): Withdrawn in open court		Image
12/02/2021	ORDER: This case is specially assigned to Hon. Jeffrey Karp for all matters before this court.	13	Image
12/14/2021	Event Result:: Jury Trial scheduled on: 10/31/2022 09:00 AM Has been: Not Held For the following reason: By Court prior to date Comments: This case is not scheduled for JT on 10/31/22. Scheduled in error. Hon. Jeffrey Karp, Presiding Staff: Debra Vernava, Assistant Clerk Magistrate		
12/14/2021	Event Result:: Final Trial Conference scheduled on: 10/14/2022 10:00 AM Has been: Not Held For the following reason: By Court prior to date Comments: This case is not scheduled for FTC on this date. Scheduled in error. Hon. Jeffrey Karp, Presiding Staff: Debra Vernava, Assistant Clerk Magistrate		
12/14/2021	Event Result:: Final Pre-Trial Conference scheduled on: 08/24/2022 02:00 PM Has been: Not Held For the following reason: By Court prior to date Comments: This case is not scheduled for a FPTC on this date. Scheduled in error. Hon. Jeffrey Karp, Presiding Staff: Jose Mejia, Assistant Clerk Magistrate		
12/14/2021	Event Result:: Final Pre-Trial Conference scheduled on: 08/24/2022 02:00 PM Has been: Not Held For the following reason: By Court prior to date Comments: This case is not scheduled for a FPTC on this date. Scheduled in error. Hon. Jeffrey Karp, Presiding Staff: Lisa Partelow, Assistant Clerk		
12/15/2021	Answer to petition to take property and jury claim demand	14	Image
12/17/2021	Amended Answer to petition to take property received from Defendant Northeastern University	15	Image
01/18/2022	Proposed Filings/Orders Applies To: Ponsetto, Esq., James P (Attorney) on behalf of Town Of Nahant (Plaintiff)	16	Image
01/19/2022	Proposed Filings/Orders Applies To: Faller, Esq., Joel E (Attorney) on behalf of Northeastern University (Defendant)	17	Image
01/19/2022	Attorney appearance On this date Joel E Faller, Esq. added for Defendant Northeastern University		
02/02/2022	Event Result:: Rule 16 Conference scheduled on: 02/02/2022 02:00 PM Has been: Held as Scheduled Comments: FTR COURTROOM H Hon. Jeffrey Karp, Presiding Staff: Jose Mejia, Assistant Clerk		
02/02/2022	The following form was generated: Notice to Appear Sent On: 02/02/2022 14:53:33		
03/04/2022	Proposed Filings/Orders ///Joint Amended Tracking Order	18	Image

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
03/09/2022	Endorsement on Submission of Joint Amended Tracking Order (#18.0): ALLOWED 3/9/22 ALLOWED by agreement. Judge: Drechsler, Hon. Thomas		Image
03/11/2022	Case file images Amended Tracking Order		Image
04/29/2022	Plaintiff(s) Town Of Nahant motion filed to compel Discovery	19	Image
04/29/2022	Town Of Nahant's Memorandum in support of Motion To Compel Discovery	19.1	Image
04/29/2022	Opposition to To Town Of Nahant's Motion To Compel Discovery filed by Northeastern University	19.2	Image
04/29/2022	Plaintiff Town Of Nahant's Submission of List Of Documents Filed Pursuant To Superior Court Rule 9A	19.3	Image
04/29/2022	Plaintiff Town Of Nahant's Submission of Certificate Of 9A And 9C Compliance	19.4	Image
05/03/2022	Endorsement on Motion to compel discovery (#19.0): ALLOWED See Order at #20 Judge: Karp, Hon. Jeffrey		Image
05/03/2022	ORDER: ON TOWN OF NAHANT'S MOTION TO COMPEL DISCOVERY (Paper No. 19) WHEREFORE, it is HEREBY ORDERED that: 1. Town Of Nahant's Motion To Compel Discovery (Paper No. 19) is ALLOWED. 2. Within 21 days hereof, NU shall supplement its answers to the interrogatories and responses to the requests for documents in accordance with the above, and it shall produce all responsive documents that are within its possession, custody, or control. In the event that NU asserts that it is in possession, custody, or control of responsive documents that are privileged, it shall produce a privilege log setting forth the name of the document, the date, the author(s), the general subject matter, and the grounds for NU's refusal to produce it. 3. Nahant's request for fees and costs is DENIED.[1] Jeffrey T. Karp Associates Justice, Superior Court Dated: May 3, 2022 [1] In the future, counsel shall comply with the certification requirement set forth in Superior Court Rule 9C (e.g., the date and time of the conference, etc.) or the motion will be denied on its face.	20	Image
06/28/2022	Plaintiff, Defendant, Respondent Town Of Nahant, 12.5 Acres Of Land +/- Situated IN Nahant Massachusetts, Northeastern University's Joint Motion to extend the period of discovery under the tracking order	21	Image
06/30/2022	Endorsement on Motion to Extend The Period Of Discovery Under The Tracking Order (#21.0): ALLOWED ALLOWED. Dated 6/30/2022.		Image
08/01/2022	Respondent(s) Northeastern University motion filed to compel Compliance with document Subpoena	22	Image
08/01/2022	Opposition to Northeastern University's Motion to compel compliance with document Subpoena, and (ii) in support of cross-motion for protective order from multiple depositions sought by Northeastern of Town affiliated persons filed by Town Of Nahant	22.1	Image
08/01/2022	Opposition to Northeastern University's Motion to compel compliance with document subpoena filed by Nahant Preservation Trust	22.2	Image
08/01/2022	Affidavit of Emily Potts in support of Non-Party Nahant Preservation Trust's opposition to Northeastern University's Motion to compel compliance with document subpoena	22.3	Image
08/01/2022	Affidavit Dennis Maroney in support of Non-Party Nahant Preservation Trust's opposition to Northeastern University's Motion to Compel Compliance with document Subpoena	22.4	Image
08/01/2022	Reply/Sur-reply regarding motion to compel compliance with document subpoena	22.5	Image
08/01/2022	Rule 9A list of documents filed. Applies To: Northeastern University (Defendant)	22.6	Image

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
08/01/2022	Plaintiff(s) Town Of Nahant Cross motion filed for protective order from multiple depositions sought by Northeastern of town affiliated persons	23	Image
08/01/2022	Opposition to cross-motion for Protective order from multiple depositions sought by Northeastern of town affiliated persons filed by Northeastern University	23.1	Image
08/01/2022	Rule 9A list of documents filed. Applies To: Northeastern University (Defendant)	23.2	Image
08/02/2022	Attorney appearance On this date David E Lurie, Esq. added for Other interested party Nahant Preservation Trust		
08/02/2022	Attorney appearance On this date Harley Clarke Racer, Esq. added for Other interested party Nahant Preservation Trust		
08/18/2022	ORDER: ORDER ON TOWN OF NAHANT'S CROSS-MOTION FOR PROTECTIVE ORDER FROM MULTIPLE DEPOSITIONS SOUGHT BY NORTHEASTERN OF TOWN AFFILIATED PERSONS (Paper No. 23) WHEREFORE, it is HEREBY ORDERED that: 1. Within 21 days hereof, NU shall serve, pursuant to Superior Court Rule 9A, a supplemental memorandum in opposition to the Motion that separately sets forth the following information for each Town-affiliated person it seeks to depose: a. The name of the person. b. The person's current and/or former title and/or role with the Town. c. If NU reasonably contemplates requesting the witness to produce documents (i.e., outside the general document production procedure under rule 34), a list of all documents that NU reasonably expects to request the witness to produce. d. The matters and subjects about which NU contemplates questioning the witness, with as much detail as reasonably possible. e. The bases for which NU believes the witness has knowledge of the information it seeks. f. With respect to any deposition NU contemplates conducting under Rule 30(b)(6), the information set forth above in (c) through (e). 2. After serving the supplemental memorandum on the Town, NU shall promptly initiate and conduct a meaningful conference with the Town under Superior Court Rule 9C. 3. Within ten days after completion of the Rule 9C conference, the Town shall serve a supplemental memorandum in support of the Motion if it so desires. 4. NU shall file the supplemental memoranda pursuant to Superior Court Rule 9A, including the certificate required by Rule 9C. 5. Upon receipt of the 9A package, this Court will rule on the Motion. 6. NU may not depose any Town-affiliated person it fails to list in the supplemental memorandum without good cause and leave of this Court.[1] 7. Upon receipt and consideration of the supplemental memoranda, this Court will decide the Motion on the merits. [1] This court recognizes that its decision on NU's Motion to Compel Compliance with Document Subpoena (Paper No. 22), which the Court has under advisement, may affect the identity of potential Town-affiliated witnesses that NU may seek to depose and the information it seeks to discover. Thus, the discovery of this information may be grounds for NU to request leave to depose additional Town-affiliated persons. (See Paper No. 24 for full text of Order)	24	Image
08/18/2022	Endorsement on Motion for Protective Order from Multiple Depositions Sought by Northeaster of Town Affiliated Persons (#23.0): Other action taken See Order at Paper No. 24. Judge: Karp, Hon. Jeffrey		Image
08/29/2022	ORDER: ORDER ON RESPONDENT NORTHEASTERN UNIVERSITY'S MOTION TO COMPEL COMPLIANCE WITH DOCUMENT SUBPOENA (Paper No. 22) *** For the forgoing reasons, it is HEREBY ORDERED that: 1. Within 30 days hereof, NPT shall produce to NU in response to the Subpoena the following documents: All documents evidencing or pertaining to communications by and between NPT, its agents, employees, officers, and attorneys, and the Town, its agents, employees, and attorneys for the period January 1, 2018, through September 16, 2021 (the date of the Town's filing of this action), regarding in any manner NU's development of its land on East Point and the taking at issue in this action. 2. If NPT asserts that any responsive documents are protected by a privilege, it shall identify the document	25	Image

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
	with reasonable particularity and the privilege being asserted on a privilege log, and produce the log. (See Paper No. 25 for full text of Order) Judge: Karp, Hon. Jeffrey		
08/29/2022	Docket Note: Paper No. 25 emailed to counsel		
08/29/2022	Endorsement on Motion to Compel Compliance with Document Subpoena (#22.0): Other action taken ALLOWED in part. See Order at Paper No. 25. Judge: Karp, Hon. Jeffrey		Image
10/11/2022	Defendant Northeastern University's Request for leave to file surreply to Town of Nahant's cross-motion for protective order. Applies To: Faller, Esq., Joel E (Attorney) on behalf of Northeastern University (Defendant)	26	Image
10/11/2022	Northeastern University's Surreply Memorandum in opposition to Town of Nahant's cross-motion for protective order. (SUPPLEMENTAL MEMORANDUM)	26.1	Image
10/11/2022	Certificate of Compliance Superior Court Rule 9C WITH CERTIFICATE OF SERVICE Applies To: Faller, Esq., Joel E (Attorney) on behalf of Northeastern University (Defendant)	26.2	
10/11/2022	Town Of Nahant's Memorandum in support of its cross-motion for protective order from multiple depositions sought by Northeastern of Town Affiliated Persons. (Supplemental Memo) Applies To: Masterman, Esq., James D (Attorney) on behalf of Town Of Nahant (Plaintiff)	26.3	Image
10/13/2022	Endorsement on Request for leave to File Surreply to Town of Nahant's Cross-Motion for Protective Order (#26.0): ALLOWED Surreply brief is limited to five (5) pages.		Image
10/21/2022	Reply/Sur-reply from Northeastern University	27	Image
10/25/2022	Docket Note: file sent to Judge Karp in Lawrence Superior Court		
11/04/2022	Event Result:: Rule 56 Hearing scheduled on: 12/14/2022 10:00 AM Has been: Not Held For the following reason: By Court prior to date Hon. Jeffrey Karp, Presiding Staff: Debra Vernava, Assistant Clerk Magistrate		
11/04/2022	The following form was generated: Notice to Appear Sent On: 11/04/2022 10:02:06		
11/04/2022	Case file images. Notice To Appear For Conference To Review Status on 12/14/2022 at 2:00pm		Image
11/15/2022	ORDER: SECOND ORDER ON TOWN OF NAHANT'S CROSS-MOTION FOR PROTECTIVE ORDER FROM MULTIPLE DEPOSITIONS SOUGHT BY NORTHEASTERN OF TOWN AFFILIATED PERSONS (PAPER NO. 23) For the above reasons, it is HEREBY ORDERED that: 1. So much of the Town Of Nahant's Cross-Motion For Protective Order From Multiple Depositions Sought By Northeastern Of Town Affiliated Persons (Paper No. 23) requesting to limit the number of depositions conducted by NU of Town-affiliated persons is ALLOWED. 2. NU may conduct depositions of the following Town-affiliated persons and no other such persons without leave of the Court: (a) the Town under Rule 30(b)(6); (b) Joshua Antrim or Mark Cullinan; (c) one of the following former members of the Nahant Board of Selectmen: Richard Lombard, Francis Enzo Barile, or Chesley Taylor; (d) one of the following members of the Nahant Northeastern Advisory/Liaison Committee: Paula Devereaux, Bobbie-Jo Blair, Nancy Cantelmo, or Jeffrey Mussman; (e) Antonio Barletta; and, (f) Gerry Perry. 3. The Town Of Nahant's request to preclude (and objections to) inquiry by NU of Town-affiliated deponents covered by Topics Nos. 10, 11, and 21 in NU's Rule 30(b)(6) deposition notice and "inquiry into the donation and donor identity" are DENIED. 4. The Town's objections to inquiry by NU of Town-affiliated deponents about a meeting of the Board conducted in executive session on March 26, 2018, are DENIED without prejudice. Judge: Karp, Hon. Jeffrey	28	Image

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
11/15/2022	Endorsement on Motion for Protective Order from Multiple Depositions Sought by Northeastern of Town Affiliated Persons (#23.0): Other action taken See Second Order at #28. Judge: Karp, Hon. Jeffrey		Image
12/13/2022	Respondent(s) Northeastern University motion filed to compel to Comply with Court Order Applies To: Nahant Preservation Trust (Other interested party)	29	Image
12/13/2022	Opposition to Motion to Compel filed by Town Of Nahant	29.1	Image
12/13/2022	Affidavit of Jeffrey T. Blake in Support of the Town of Nahant's Opposition	29.2	Image
12/13/2022	Opposition to Motion to Compel filed by Nahant Preservation Trust	29.3	Image
12/13/2022	Affidavit of Harley C. Racer in Support of Nahant Preservation's Opposition	29.4	Image
12/13/2022	Affidavit of Jeffrey R. Musman in Support of Nahant Preservation Trust's Opposition	29.5	Image
12/13/2022	Rule 9A list of documents filed.	29.6	Image
12/14/2022	Event Result:: Conference to Review Status scheduled on: 12/14/2022 02:00 PM Has been: Held via Video/Teleconference Comments: FTR Courtroom 1. Clerk Patten to consult with Clerk Mitchell re: a Zoom status date on a Monday or Wednesday in early to mid February. Regarding the motion to compel, court will either rule on the papers or schedule a hearing. Hon. Jeffrey Karp, Presiding Staff: Debra Vernava, Assistant Clerk Magistrate		
12/19/2022	Endorsement on Motion to Respondent's Northeastern University's Motion to Compel Nahant Preservation Trust, Inc., to comply with Court order (#29.0): DENIED After thorough consideration, DENIED. See Order at Paper No. 30		Image
12/20/2022	ORDER: WHEREFORE, it is HEREBY ORDERED that Respondent Northeastern University's Motion to Compel Nahant Preservation Trust, Inc., to Comply with Court Orders (Paper No. 29) is DENIED. (See full text of scanned Order)	30	Image
02/14/2023	Event Result:: Conference to Review Status scheduled on: 02/15/2023 02:00 PM Has been: Not Held For the following reason: By Court prior to date Hon. Jeffrey Karp, Presiding Staff: Anne Mitchell, Assistant Clerk Magistrate		
03/21/2023	Plaintiff Town Of Nahant's Motion to permit town to review former selectman's documents for privileged and confidential materials before production to Northeastern in response to a subpoena duces tecum [9C Compliant]	31	Image
03/21/2023	Plaintiff Town Of Nahant's Memorandum in support of motion to permit town to review former selectman's documents for privileged and confidential materials before production to Northeastern in response to a subpoena duces tecum	31.1	Image
03/21/2023	Opposition to Town of Nahant's Motion to permit town to review former selectman's documents for privileged and confidential materials before production to Northeastern in response to a subpoena duces tecum filed by Northeastern University	31.2	Image
03/21/2023	Rule 9A list of documents filed.	31.3	Image
03/21/2023	Certificate of Compliance Superior Court Rule 9A	31.4	Image
03/21/2023	General correspondence regarding cover letter	32	Image
03/23/2023	Endorsement on Motion to Permit Town to Review Former Selectmen's Documents for Privileged and Confidential Materials Before Production to Northeastern in Response to Subpoena Duces Tecum [9C Compliant] (#31.0): DENIED After thorough consideration, DENIED. The Town has not demonstrated that the deponent is likely to be in possession of privileged documents. The supporting affidavit does not claim that the Town ever sent privileged document to, for e.g., the deponent's home or personal email account. Further, it strains credulity to believe that a former Board member would likely "inadvertently" produce privileged documents or data.		Image

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
03/28/2023	Event Result:: Conference to Review Status scheduled on: 03/28/2023 02:00 PM Has been: Held via Video/Teleconference Comments: (Zoom) - 2:23:28 p.m., courtroom 1 (NBPT) Upon oral motion, case management schedule is as follows: Depositions completed by 6/30/23; dispositive motions served by 8/15/23; oppositions to dispositive motions served by 9/15/23; replies served by 9/25/23, and dispositive motions filed by 9/28/23. Status conference scheduled for 12/13/23 via Zoom to discuss the scheduling of a hearing on dispositive motions. The related "permitting cases" are stayed pending the court's ruling on the dispositive motions in this "eminent domain" case. Hon. Jeffrey Karp, Presiding Staff: Anne Mitchell, Assistant Clerk Magistrate		
03/29/2023	ORDER: Order On Oral Motion Upon oral motion, the case management schedule is as follows: depositions completed by 6/30/23; dispositive motions served by 8/15/23; oppositions to dispositive motions served by 9/15/23; replies served by 9/25/23; and dispositive motions filed by 9/28/23. A status conference will be scheduled for 12/13/23 via Zoom to discuss scheduling of the hearing on the dispositive motions in early 2024. The related "permitting cases" (2177CV00958, 2177CV00960, 2177CV01021, 2277CV00111, and 2277CV00976) are stayed pending the court's ruling on the dispositive motions in this "eminent domain" case. Judge: Karp, Hon. Jeffrey	33	Image
03/30/2023	The following form was generated: Notice to Appear Sent On: 03/30/2023 10:49:05		
03/30/2023	The following form was generated: Notice to Appear Sent On: 03/30/2023 12:03:12		
03/30/2023	Case file images - Notice to Appear for Status Conference 12/13/23 at 3:00 p.m. via Zoom (Civil B Zoom)		Image
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07/20/2023	Endorsement on Motion to amend the Case Management Order (#34.0): ALLOWED After review, the motion is ALLOWED AS AMENDED. (dated 7/20/2023)		Image
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10/13/2023	Defendant Northeastern University's Assented to Motion for leave to file opposition in excess of page limit	36	Image
10/17/2023	Endorsement on Motion for Leave to File Opposition in Excess of Page Limit (#36.0): ALLOWED Allowed. (October 17, 2023)		Image
11/16/2023	Defendant Northeastern University's Assented to Motion for Leave To File Reply In Excess Of Page Limit	37	Image
11/17/2023	Plaintiff Town Of Nahant's Motion for Summary Judgment Regarding Northeastern University's Challenge to the Validity of the Town's Order of Intention to Take By Eminent Domain Pursuant to G.L. c.80A	38	Image
11/17/2023	Town Of Nahant's Memorandum in support of Motion For Summary Judgment Regarding Northeastern University's Challenge to the Validity of the Town's Order of Intention to Take By Eminent Domain Pursuant to G.L. c.80A	38.1	Image
11/17/2023	Defendant Northeastern University's Response to Town of Nahant's Statement of Facts In Support of it's Motion For Summary Judgment	38.2	Image
11/17/2023	Opposition to Town of Nahant's Motion For Summary Judgment Regarding Northeastern University's Challenge to the Validity of the Town's Order Of Intention to Take By Eminent Domain Pursuant to G.L. c. 80A. filed by Northeastern University	38.3	Image
11/17/2023	Plaintiff Town Of Nahant's Reply to Northeastern's Opposition to Nahant's Motion For Summary Judgment	38.4	Image

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
11/17/2023	Defendant Northeastern University's Motion for Summary Judgment on Plaintiff's Claims	39	Image
11/17/2023	Plaintiff Town Of Nahant's Response to Respondent's Statement of Undisputed Facts Pursuant to Superior Court Rule 9A(B)(5)	39.1	Image
11/17/2023	Town Of Nahant's Memorandum in opposition to Northeastern University's Motion For Summery Judgment	39.2	Image
11/17/2023	Defendant Northeastern University's Reply for Their Motion For Summary Judgment on Plaintiff's Claims.	39.3	Image
11/17/2023	Joint appendix for Summary Judgment motion package filed. (INDEX)	39.4	Image
11/17/2023	Joint appendix for Summary Judgment motion package filed. Volume I of VI - (Exhibits 1-7)		Image
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11/17/2023	Certificate of Compliance	39.5	Image
11/17/2023	Rule 9A notice of filing and list of Documents Filed Pursuant to Superior Court Rule 9A	39.6	Image
11/27/2023	Endorsement on Motion for (Northeastern University's assented) leave to file reply in excess of page Limit (#37.0): ALLOWED Dated: 11/22/23		Image
11/29/2023	Event Result:: Conference to Review Status scheduled on: 12/13/2023 03:00 PM Has been: Not Held For the following reason: By Court prior to date Hon. Jeffrey Karp, Presiding Staff: Anne Mitchell, Assistant Clerk Magistrate		
01/08/2024	Event Result:: Rule 56 Hearing scheduled on: 01/24/2024 02:00 PM Has been: Rescheduled For the following reason: By Court prior to date Hon. Jeffrey Karp, Presiding Staff: Anne Mitchell, Assistant Clerk Magistrate		
01/17/2024	Event Result:: Rule 56 Hearing scheduled on: 01/24/2024 10:30 AM Has been: Rescheduled For the following reason: Request of Plaintiff Hon. Jeffrey Karp, Presiding Staff: Anne Mitchell, Assistant Clerk Magistrate		
01/26/2024	Matter taken under advisement: Rule 56 Hearing scheduled on: 01/26/2024 10:00 AM Has been: Held - Under advisement Comments: FTR 10:10:25AM-12:12:31PM Courtroom 1 Newburyport Sessions Clerk Jaimie Essigmann Hon. Jeffrey Karp, Presiding Staff: Anne Mitchell, Assistant Clerk Magistrate		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
01/31/2024	Plaintiff Town Of Nahant's EMERGENCY Motion for Leave to File Post-Hearing Brief Regarding Cross-Motions for Summary Judgment	40	Image
01/31/2024	Endorsement on Motion for Leave to File Post-Hearing Brief Regarding Cross-Motions for Summary Judgment (#40.0): DENIED The parties filed their cross-motions for summary judgment pursuant to Mass. R. Civ. P. 56. The Court is not aware of any reported decisions in Massachusetts, nor has the Town cited any, that stand for the proposition that the normal standards and procedure under Rule 56 do not apply at this stage of a proceeding, such as this, where a landowner is "impugn[ing] the validity or regularity of the [taking] proceedings" under Chapter 80A. G.L. c. 80A, § 7. The mandate under G.L. c. 80A, § 7, that a landowner's challenge must be heard by the court "forthwith," does not change the Court's analysis. To be clear, the Court agrees with the Town that summary judgment may enter at this stage of the proceedings. However, summary judgment may enter only if, like the cases cited by the Town, there are no genuine issues of material fact or the record shows that NU "has no reasonable expectation of proving an essential element of [its bad faith taking] claim," Williams v. Steward Health Care Sys., LLC, 480 Mass. 286, 290 (2018). The Court has made no decision regarding the merits of the cross-motions. At the hearing, the Court simply commented on well-known principles regarding the prohibition against weighing the credibility of witnesses, Attorney Gen. v. Brown, 400 Mass. 826, 832 (1987), or that "[t]he granting of summary judgment in a case where a party's state of mind or motive constitutes an essential element of the cause of action is disfavored." Quincy Mut. Fire Ins. Co. v. Abernathy, 393 Mass. 81, 86 (1984) (citations omitted). Judge: Karp, Hon. Jeffrey		Image
04/16/2024	MEMORANDUM & ORDER: Memorandum Of Decision And Order On Town Of Nahant's Motion For Summary Judgment Regarding Challenge To ITS Intention To Take By Eminent Domain(Paper No. 38) and Northeastern University's Motion for Summary Judgment Regarding Its Challenge To Town Of Nahant's Intention To Take By Eminent Domain (Paper No. 39) Judge: Karp, Hon. Jeffrey ORDER For the above reasons, it is HEREBY ORDERED that: 1. The Town Of Nahant's Motion For Summary Judgment Regarding Northeastern University's Challenge To The Validity Of The Town's Order Of Intention To Take By Eminent Domain Pursuant To G.L. c. 80A (Paper No. 38) is DENIED as to Northeastern's affirmative defense of a pretextual bad faith taking (and the Court does not reach the issue of Northeastern's affirmative defense of a private benefit bad faith taking). 2. The Respondent's Motion For Summary Judgment On Plaintiff's Claims (Paper No. 39) is ALLOWED as to Northeastern's affirmative defense of a pretextual bad faith taking (and the Court does not reach the issue of Northeastern's affirmative defense of a private benefit bad faith taking). 3. The Court hereby DECLARES and ADJUDGES that the Order Of Intention To Take Conservation Easement By Eminent Domain issued by the Board of Selectmen of the Town of Nahant on September 8, 2021, that is at issue in the Town of Nahant's Petition To Take Property (Paper No. 1) and that was filed in the Southern Essex Registry District of the Land Court at Document 629107 on September 10, 2021, is null and void because the Town of Nahant is pursuing the taking described therein in bad faith for an improper reason. 4. The Town's Petition To Take Property (Paper No. 1) is HEREBY DISMISSED and JUDGMENT SHALL ENTER at the appropriate time. 5. If Northeastern University seeks an award of costs and/or believes it is entitled to "indemnity for loss and damages" and an award of reasonable attorney's fees from the Town of Nahant under G.L. c. 80A, § 13, then it shall serve a motion for same on the Town of Nahant with supporting documentation, pursuant to Superior Court Rule 9A, within 30 days hereof.[1]	41	Image
04/16/2024	Docket Note: Paper No. 41 emailed to counsel		
04/16/2024	Endorsement on Motion for Summary Judgment Regarding Northeastern University's Challenge to the Validity of the Town's Order of Intention to Take by Eminent Domain Pursuant to G.L. c. 80A (#38.0): DENIED See Memo and Order at Paper No. 41. (Attest: ATMitchell, Asst. Clerk) Judge: Karp, Hon. Jeffrey		Image
04/16/2024	Endorsement on Motion for Summary Judgment on Plaintiff's Claims (by Respondent) (#39.0): ALLOWED See Memo and Order at Paper No. 41. (Attest: ATMitchell, Asst. Clerk) Judge: Karp, Hon. Jeffrey		Image
05/14/2024	Plaintiff Town Of Nahant's Petition for Relief From Superior Court's Interlocutory Order On Cross-Motions For Summary Judgment	42	Image

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
05/14/2024	Town Of Nahant's Memorandum in support of Petition For Relief From Superior Court's Interlocutory Order On Cross-Motion For Summary Judgment	42.1	Image
05/14/2024	Exhibits/Appendix /Index To Record Appendix Of Exhibits Concerning Single Justice Petition	42.2	Image
05/14/2024	Plaintiff Town Of Nahant's EMERGENCY Motion for Stay Pending Disposition Of Petition For Interlocutory Relief Pursuant To Mass.Gen.L.CH.231 s 118 (First Paragraph) From Superior Court's Interlocutory Order On Cross-Motions For Summary Judgment	43	Image
05/14/2024	Exhibits/Appendix (#1 of 4)		Image
05/14/2024	Exhibits/Appendix (#2 of 4)		Image
05/14/2024	Exhibits/Appendix (#3 of 4)		Image
05/14/2024	Exhibits/Appendix (#4 of 4)		Image
05/15/2024	Opposition to Town of Nahant's Emergency Motion For Stay Pending Disposition For Interlocutory Relief Pursuant to Mass.Gen.L.CH.231 sec 118 (First Paragraph) From Superior Court's Interlocutory Order on Cross-Motions For Summary Judgment) filed by Northeastern University	44	Image
05/16/2024	Defendant Northeastern University's Submission of Rule 9E Notice of Respondent's Motion for Award of Costs and Indemnity Pursuant to G.L. C. 80A § 11 and 13	45	Image
05/17/2024	Endorsement on Motion to stay an action (#43.0): DENIED After thorough consideration, DENIED. The Court fails to be persuaded that a stay is in the interests of justice given that the only matter to be considered is whether Northeastern University is entitled to fees and costs under G.L. c. 80A, s13, a novel question of law. The Court will consider a stay of any such award at the appropriate time.		Image
05/17/2024	Defendant Northeastern University's Response to Plaintiff's Petition for Relief from Superior Court's Interlocutory Order on Cross-Motions for Summary Judgment (Appeals Court Case No. 2024-J-0285)	46	Image
05/20/2024	Plaintiff Town Of Nahant's EMERGENCY Motion to (A) Bifurcate Damages Phase Concerning Northeastern's Motion for Award of Costs and Indemnity Pursuant to G.L. C. 80A, S11 and 13 or (B) Alternatively, to Extend Time for the Town to Oppose the Motion	47	Image
05/20/2024	Exhibits/Appendix (1) Respondent's Motion for Award of Costs and Indemnity Pursuant to G.L. C. 80A S 11 and 13		Image
05/20/2024	Exhibits/Appendix (A) Affidavit of Joel Faller in Support of Respondent's Motion for Award of Costs and Indemnity		Image
05/20/2024	Exhibits/Appendix (B) Affidavit of James V. Toner, III		Image
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05/20/2024	Exhibits/Appendix (D) Affidavit of Timothy J. Mackay, in Support of Northeastern University's Motion for Costs, Fees, and Damages		Image
05/20/2024	Exhibits/Appendix (E) Affidavit of Anubhav Bhargava in Support of Northeastern University's Motion for Costs, Fees, and Damages		Image

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
05/21/2024	Opposition to Northeastern University's opposition to town Of Nahant's emergency motion to bifurcate and response to the town's motion to extend time. filed by Northeastern University Filed 5/21/24.	48	Image
05/21/2024	Event Result:: Conference to Review Status scheduled on: 05/21/2024 02:00 PM Has been: Held as Scheduled Comments: FTR LAW(3) Hon. Jeffrey Karp, Presiding Staff: Dawn Mansfield, Assistant Clerk Magistrate		
05/21/2024	Endorsement on Motion to Plaintiff Town Of Nahant's EMERGENCY Motion to (A) Bifurcate Damages Phase Concerning Northeastern's Motion for Award of Costs and Indemnity Pursuant to G.L. C. 80A, S11 and 13 or (B) Alternatively, to Extend Time for the Town to Oppose the Motion (#47.0): Other action taken After hearing, Allowed in part. It is HEREBY ORDERED that the town shall serve its opposition to Northeastern Universities damages motion by July 26,2024, pursuant to Rule 9A. The motion is otherwise Denied. Dated 5/21/24. Judge: Karp, Hon. Jeffrey		Image
05/24/2024	Notice of docket entry received from Appeals Court ORDER (RE#1): The plaintiff Town of Nahant seeks review pursuant to G.L. c. 231, s118 (par.1) of an order of the Essex Superior Court denying its motion for summary judgment and allowing the defendant Northeastern University's cross-motion for summary judgment on the Town's petition pursuant to G.L. c. 80A to take by eminent domain certain property owned by Northeastern. The Town requests as relief that the single justice reverse the Superior Court's order and enter judgment in favor of the Town. The relief requested is outcome determinative, which is relief that a single justice does not have the authority to grant. See DeLucia v. Kfoury, 93 Mass. App. Ct. 166, 168 (2018), citing Pemberton v. Pemberton, 9 Mass. App. Ct.. 809, 909 (1980) ("[The] power to render any judgment and to make any order that ought to have been made upon the whole case...rest[s] solely with a panel of [t]here justices who constitute a quorum to decide all matters required to be heard by the appeals court"((internal quotation marks omitted). Alternatively, the Town requests that the single justice grant leave to take an interlocutory appeal from the order. The petition does not present the requisite extraordinary or exceptional issues that would merit granting the requested relief. See Long v. Wickett, 50 Mass. Appt. Ct. 380, 387-389 (2000) (discussing "the appellate courts' traditional abhorrence of piecemeal appellate review"). Moreover, this matter has been resolved on the merits and upon the Superior Court's determination as to any damages, a final judgment will enter from which the Town may then file a notice of appeal to a panel of this court. Accordingly, the petition is denied.	49	Image
06/03/2024	Attorney appearance On this date David E Lurie, Esq. dismissed/withdrawn for Other interested party Nahant Preservation Trust		
06/27/2024	Plaintiff Town Of Nahant's EMERGENCY Motion to (A) Extend Time for the Town to Oppose Northeastern's Motion for Award of Costs and Indemnity Pursuant to G.L. C. 80A, §§11 and 13 and (B) to Compel Discovery	50	Image
06/28/2024	Endorsement on Motion to (A) Extend Time for the Town to Oppose Northeastern's Motion for Award of Costs and Indemnity Pursuant to G.L. C. 80A, §§11 and 13 and (B) to Compel Discovery (#50.0): Other action taken The Court will schedule a hearing in Newburyport in due course regarding the procedural issues raised in this motion. In the meantime, all discovery and the Court's Order of 5/21/24 regarding Paper No.47 are HEREBY STAYED until further order of the court or the filing of a stipulation. Dated 6/28/24.		Image
07/16/2024	Event Result:: Motion Hearing scheduled on: 07/23/2024 02:00 PM Has been: Not Held For the following reason: Request of Plaintiff Hon. Jeffrey Karp, Presiding Staff: Anne Mitchell, Assistant Clerk Magistrate		
07/31/2024	Opposition to Town of Nahant's Emergency Motion (A) to Extend Time for the Town to Oppose Northeastern's Motion for Award of Costs and Indemnity Pursuant to G.L. C. 80A §§ 11 and 13 and (B) to Compel Discovery filed by Northeastern University	51	Image
08/02/2024	Event Result:: Motion Hearing scheduled on: 08/02/2024 12:00 PM Has been: Held via Video/Phone Comments: (Zoom) - FTR - 12:03:26 - 12:55:26 p.m., courtroom 1 The Court will issue a procedural order as stated on the record. Hon. Jeffrey Karp, Presiding Staff: Anne Mitchell, Assistant Clerk Magistrate		
08/06/2024	ORDER: PROCEDURAL ORDER REGARDING NORTHEASTERN UNIVERSITY'S MOTION FOR COSTS AND INDEMNITY *** WHEREFORE, it is HEREBY ORDERED that:	52	Image

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
	1. By September 6, 2024, the parties shall jointly file a Joint Statement Of Issues Of Law ("Joint Statement") that shall set forth: (a) agreed upon statements describing as precisely as possible the issues of law that should be addressed by the Court before hearing the Motion For Indemnity; (b) disputed statements describing as precisely as possible the issues of law that should be addressed by the Court before hearing the Motion For Indemnity, and the parties' respective positions as to each disputed item; and, (c) any disputes between the parties regarding the need to conduct discovery in order to brief any of the agreed upon or disputed issues of law, and the parties' respective positions as to the disputed discovery.[2] 2. Thereafter, the Court will decide any disagreements between the parties raised in the Joint Statement and issue an appropriate Order, which will set forth the approved issues of law to be addressed by the Court and the scope of any disputed discovery that may be conducted. 3. The Court anticipates that said Order will: (a) set forth the precise statements of the issues of law to be decided by the Court; (b) order that the issues will be decided by the Court on summary judgment, pursuant to Superior Court 9A(b)(5), with NU serving as the initial moving party;[3] and, (c) require that the parties confer regarding a briefing schedule and file an appropriate stipulation or motion thereon. SO ORDERED. (See Paper No. 52 for the full text of the Court's Procedural Order, including footnotes) Judge: Karp, Hon. Jeffrey		
08/06/2024	Docket Note: Paper No. 52 emailed to counsel		
08/06/2024	Endorsement on Submission of Emergency Motion (A) to Extend Time for the Town to Oppose Northeastern's Motion for Award of Costs and Indemnity Pursuant to G.L. C. 80A §§ 11 and 13 and (B) to Compel Discovery filed by Northeastern University (#50.0): Other action taken See Procedural Order at #52. Judge: Karp, Hon. Jeffrey		Image
09/06/2024	Plaintiff, Defendant Town Of Nahant, 12.5 Acres Of Land +/- Situated IN Nahant Massachusetts's Joint Statement of Issues of Law	53	Image
10/03/2024	ORDER: PROCEDURAL ORDER FRAMING ISSUES TO BE DECIDED ON SUMMARY JUDGMENT REGARDING NORTHEASTERN UNIVERSITY'S MOTION FOR COSTS AND INDEMNITY *** WHEREFORE, it is HEREBY ORDERED that: 1. The following issues of law should be decided by the Court on summary judgment: a. What are the "costs, as in actions at law" that NU is entitled to be awarded under G.L. c. 80A, § 13? b. Are out-of-pocket expert fees, attorney's fees, delay damages (i.e., the increase in NU's building costs), a loss of fair market value of NU's land, etc., a "damage" "suffered" by NU under G.L. c. 80A, § 11, that NU is entitled to recover under G.L. c. 80A, § 13? c. Are out-of-pocket expert fees, attorney's fees, delay damages (i.e., the increase in NU's building costs), a loss of fair market value of NU's land, etc., a "loss" "suffered" by NU under G.L. c. 80A, § 11, that NU is entitled to recover under G.L. c. 80A, § 13? d. Where § G.L. c. 80A, § 13, states that NU is entitled to be awarded "indemnity for loss and damages as provided in [§ 11]," is NU also entitled to an award for having "been put to expense by the proceedings" under G.L. c. 80A, § 11? e. What is meant by the phrase in G.L. c. 80A, § 11, that NU is "entitled to recover indemnity in full"? f. Whether in deciding the merits of the Motion For Indemnity, the parties are entitled to an evidentiary hearing decided by the Court, something more akin to an assessment of damages hearing under Mass. R. Civ. P. 54, or a determination by a jury of contested issues of fact and the amount to be awarded to NU. 2. The Court adopts the briefing schedule proposed by the parties in § IV(B) of the Joint Statement and waives the page limit requirements of Rule 9A regarding the length of the initial memoranda. 3. The Order of June 28, 2024, staying discovery shall remain in place until further order of the Court. See margin order on Paper No. 50. Nevertheless, the parties are granted leave to conduct agreed upon discovery. (See Paper No. 54 for the full text of the Court's Procedural Order)	54	Image

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
12/31/2024	Respondent Northeastern University's Request for ruling of law regarding its entitlement to costs and indemnity pursuant to G.L.C.80A Sec 11 and 13	55	Image
12/31/2024	Town Of Nahant's Memorandum Pursuant to Procedural Order (Paper 54)	55.1	Image
12/31/2024	Reply/Sur-reply Applies To: Northeastern University (Defendant) Reply to Town of Nahants memorandum of law pursuant to Court Procedural order (Paper 54)	55.2	Image
12/31/2024	Reply/Sur-reply Sur-Reply to Northeaster's reply pursuant to Court Procedural Order (Paper 54) Applies To: Town Of Nahant (Plaintiff)	55.3	Image
12/31/2024	Defendant Northeastern University's Submission of List of documents	55.4	Image
12/31/2024	Docket Note: File sent to Lawrence		
01/14/2025	Plaintiff Town Of Nahant's Motion for reconsideration of Order on Summary Judgment and Memorandum of Law in support thereof	56	Image
01/14/2025	Opposition to Town of Nahant's Motion for reconsideration of Order on Summary Judgment filed by Northeastern University	56.1	Image
01/14/2025	Certificate of Compliance Superior Court Rule 9A	56.2	Image
01/14/2025	Rule 9A notice of filing	56.3	Image
01/14/2025	Plaintiff Town Of Nahant's Request for hearing	57	Image
01/21/2025	Endorsement on Motion for reconsideration of order on summary judgment and memorandum of law in support therof (#56.0): DENIED After thorough consideration Denied. This is not a "genuine motion for reconsideration." Commonwealth V. Demirtshyan", 87 Mass. App.CT. 737,741n. 8 (2015).As the Town concedes, the U.S. Supreme Court's denial of certiorari of a decision that predicated this court's original ruling is not a cognizable development of relevant land. Id. Judge: Karp, Hon. Jeffrey		
02/24/2025	Rescript received from Appeals Court; judgment AFFIRMED Judgments Affirmed. Copied from linked case: 1977CV01211		
02/24/2025	JUDGMENT/ORDER after Rescript: The original judgment (#12.0) is Affirmed. Judge: Karp, Hon. Jeffrey Copied from linked case: 2177CV00186		
02/24/2025	JUDGMENT/ORDER after Rescript: The original judgment (#88.0) is Affirmed. Judge: Karp, Hon. Jeffrey Copied from linked case: 1977CV01211		
02/28/2025	Endorsement on Request for (#55.0): Other action taken See Order at P#58		Image
02/28/2025	ORDER: ORDER and RULINGS OF LAW FRAMED BY THE COURT REGARDING NORTHEASTERN UNIVERSITY'S MOTION FOR COSTS AND INDEMNITY ORDER For the above reasons, it is HEREBY ORDERED, DECLARED and ADJUDGED that: 1. Under G.L. c. 80A, § 13, Northeastern University is entitled to recover reasonable expert and attorneys' fees that it incurred during the c. 80A proceedings, which necessarily began when the Town Meeting members approved the taking on May 15, 2021. 2. Under G.L. c. 80A, § 13, the parties are entitled to a hearing regarding the awarding of expert and attorneys' fees, and they are not entitled to an evidentiary hearing or a determination by a jury of same. (For full text see scanned image)	58	Image
02/28/2025	Docket Note: P#58 Emailed to all counsel of record		
04/30/2025	Respondent Northeastern University's motion to asess costs (For an Award of Costs) and Indemnity Pursuant to G.L. C. 80A §§11 and 13	59	Image

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
04/30/2025	Response to Motion for Award of Costs and Indemnity; and Request for Entry of Final Judgment filed by Town Of Nahant	59.1	Image
04/30/2025	Rule 9A list of documents filed.	59.2	Image
05/12/2025	Endorsement on Motion of Respondent Northeastern University For an Award of Costs and Indemnity Pursuant to G.L. C. 80A §§11 and 13 (#59.0): ALLOWED without opposition (see No. #59.1). It is HEREBY ORDERED that: 1. Pursuant to G.L. c. 80A, § 13, Northeastern University is awarded the sum of $1,035,042.00 for attorneys' fees, which includes expert fees of $303,433.50, and the sum of $9,307.60 for costs against the Town of Nahant. 2. Final Judgment SHALL ENTER in accordance with this Order, and the Orders at Nos. 41 and 58. Judge: Karp, Hon. Jeffrey		Image
05/12/2025	Judgment. It is ORDERED and ADJUDGED:: That Summary Judgment hereby enters for Northeastern University against the Town of Nahant on Northeastern University's affirmative defense of a pretextual bad faith taking. It is further ORDERED, ADJUDGED and DECLARED: That: (1) the Order Of Intention To Take Conservation Easement By Eminent Domain issued by the Board of Selectmen of the Town of Nahant on September 8, 2021, that is at issue in the Town of Nahant's Petition To Take Property (Paper No. 1) and that was filed in the Southern Essex Registry District of the Land Court at Document 629107 on September 10, 2021, is NULL and VOID, because the Town of Nahant is pursuing the taking described therein in bad faith for an improper reason; and (2) the Town of Nahant's complaint (Petition to Take Property at Paper No. 1) be and hereby is DISMISSED. It is further ORDERED and ADJUDGED: That, on the award of attorneys' fees and costs and pursuant to G.L. c. 80A, § 13 (see endorsement on Paper No. 59), judgment hereby enters for Northeastern University against the Town of Nahant in the amount of $1,035,042.00 for attorneys' fees, which includes expert fees of $303,433.50, plus $9,307.60 for costs, for a total judgment of $1,044,349.60.	60	Image
05/12/2025	Docket Note: Paper No. 60 emailed to counsel		
05/12/2025	Case sent to Essex Superior - LAWRENCE Location. File in Lawrence		
06/06/2025	Notice of appeal filed. Applies To: Ponsetto, Esq., James P (Attorney) on behalf of Town Of Nahant (Plaintiff)	61	Image
06/09/2025	Copy of Notice of Appeal sent to all parties/counsel of record	62	
06/09/2025	Case file images-P#62		Image
06/12/2025	Party(s) file Copied from linked case: 2277CV00111		
06/12/2025	Party(s) file Copied from linked case: 2177CV00960		
06/12/2025	Party(s) file Copied from linked case: 2277CV00976		
06/19/2025	Plaintiff Town Of Nahant's Certificate of compliance with Massachusetts Rule of Appellate Procedure 9(d)(2)(B)	63	Image
06/30/2025	CD of Transcript of 08/02/2024 12:00 PM Motion Hearing, 01/26/2024 10:00 AM Rule 56 Hearing received from Lizz Marzano. (received June 20, 2025)		
07/23/2025	CD of Transcript of 12/01/2021 02:30 PM Conference to Review Status, 12/14/2022 02:00 PM Conference to Review Status, 02/02/2022 02:00 PM Rule 16 Conference, 03/28/2023 02:00 PM Conference to Review Status, 05/21/2024 02:00 PM Conference to Review Status received from Jill M. Kourafas.		
07/25/2025	Appeal: Statement of the Case on Appeal (Cover Sheet).	64	Image
07/25/2025	Notice of assembly of record sent to Counsel	65	Image
07/25/2025	Notice to Clerk of the Appeals Court of Assembly of Record	66	Image

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
08/08/2025	Appeal entered in Appeals Court on 08/07/2025 docket number 2025-P-0963	67	Image

Linked Cases

Link Group	Case #	File Date	Link Role
Nahant Preservation	1977CV01211	08/20/2019	Primary Case
Nahant Preservation	2177CV00186	02/24/2021	Related Case
Nahant Preservation	2177CV00958	09/23/2021	Related Case
Nahant Preservation	2177CV00960	09/23/2021	Related Case
Nahant Preservation	2177CV01021	10/14/2021	Related Case
Nahant Preservation	2277CV00976	10/13/2022	Related Case
Nahant Preservation	2277CV00111	02/07/2022	Related Case

Case Disposition

Disposition	Date	Case Judge
Summary Judgment	05/12/2025	Karp, Hon. Jeffrey

Due to the system maintenance, MassCourts.org (including the Attorney Portal) will be unavailable between 2PM on Friday, August 29 and 6AM Tuesday, September 2. All case search, calendar functionality, and ePay, will be unavailable during this time. ✖

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO. 21 - 77-CV 00936 A

TOWN OF NAHANT,

Plaintiff,

v.

12.5 ACRES OF LAND+/- SITUATED IN NAHANT, MASSACHUSETTS,

and

NORTHEASTERN UNIVERSITY,

Respondent

RECEIVED

PETITION TO TAKE PROPERTY

1. This is a petition *in rem*, pursuant to G. L. c. 80A, § 4, by the Town of Nahant which seeks to establish the Town's right to take by eminent domain certain conservation and access easements in a parcel of land. The Town also seeks to have this Court determine the damages sustained by every person in their property as a result of the taking by eminent domain described herein, and the Respondent's entitlement to damages, if any.

JURY CLAIM

2. The Town demands a trial by jury, pursuant to G. L. c. 80A, § 9, should it later be aggrieved by the determination of the commissioners pursuant to G. L. c. 80A, § 8.

JURISDICTION AND VENUE

3. Jurisdiction and venue in this Court are proper pursuant to G. L c. 80A, § 4.

PARTIES

4. Petitioner, Town of Nahant ("**Town**"), is a body politic organized under the laws of the Commonwealth of Massachusetts, with a principal place of business located at 334 Nahant Road, Nahant, Essex County, Massachusetts.

5. Respondent, Northeastern University ("**Northeastern**"), is an institution of higher learning organized under the laws of the Commonwealth of Massachusetts with a principal place of business located at 360 Huntington Avenue, Boston, Suffolk County, Massachusetts.

ALLEGATIONS

6. The area known as East Point in Nahant, a peninsula which juts out into Massachusetts Bay, is one of the last remaining undeveloped ocean headlands in Massachusetts, consisting of predominantly undeveloped, coastal open space, beach, meadow, woodland, exposed rocky shoreline, and an existing wildlife habitat and ecological sanctuary.

7. A portion of East Point, named Henry Cabot Lodge, Jr. Memorial Park ("**Lodge Park**"), is a public park owned by the Town. Lodge Park is preserved by the Town as open space in perpetuity and used by the general public for passive recreation.

8. Adjacent and to the north of Lodge Park is a parcel of land consisting of 20.3± acres of land ("**Larger Parcel**"). An 8.024± acre portion of the Larger Parcel is improved with buildings, parking lots and other structures used by Northeastern as its Marine Science Center campus, commonly known and numbered 430 Nahant Road, Nahant, Massachusetts ("**MSC Parcel**"). The MSC Parcel is referenced as the "**Remaining Land**" on a plan entitled "Easement Plan of Land, East Point in Nahant, MA Prepared for Inhabitants of the Town of Nahant, 334 Nahant Road, Nahant MA 01908," dated April 8, 2021, by Marchionda & Associates, L.P.

("**Plan**"). Lodge Park is shown as Parcel 1C-0-1 on the Plan. The Plan is attached hereto as a part of **Exhibit A**.

9. The remainder of the Larger Parcel, consisting of 12.274± acres, is predominantly undeveloped, coastal open space ("**Undeveloped Parcel**"). To preserve the Undeveloped Parcel as open space in its natural, scenic, and open condition and to protect against any use that will interfere with the conservation values of said property, the Town seeks to establish its right to take by eminent domain a permanent, non-exclusive easement for conservation purposes ("**Conservation Easement**"), including the right of public access for outdoor recreational purposes for the general public, in, on, to and under the portions of the Undeveloped Parcel as described herein, unless specifically excepted therefrom, as set forth in the Order, defined herein ("**Conservation Easement Areas**").

10. The Conservation Easement and the conservation rights sought to be taken are described with greater particularity in the Order of Intention to Take, dated September 8, 2021 ("**Order**"). The Order is attached as Exhibit A (together with the Plan), which is incorporated by reference as if fully set forth herein.

11. The Conservation Easement Areas sought to be taken consist of two (2) areas, as shown on the Plan: Conservation Easement A, consisting of 2.648± acres, to the line of Mean High Water, and Conservation Easement B, consisting of 9.626± acres, to the line of Mean High Water, together with the abutting tidelands. The Conservation Easement Areas sought to be taken are described with greater particularity in the Order and shown on the Plan. *See* Exhibit A.

12. In addition, Canoe Beach is an oceanfront beach area consisting of 0.799± acres, to the line of Mean High Water, located northwesterly of Conservation Easement B, as shown on the Plan.

13. To confirm pre-existing public rights of access to use and enjoy Canoe Beach for outdoor recreational purposes by the general public, the Town seeks to take by eminent domain a permanent, non-exclusive access easement, including public rights of access and egress ("**Access Easement**") in, on, and to Canoe Beach, as shown on the Plan as the "Town Access & Egress Easement" ("**Canoe Beach Recreation Area;**" together with the Conservation Easement Areas, referred collectively as the "**East Point Easement Areas**").

14. The Access Easement, the purposes for which the taking is to be made and the easement rights sought to be taken in, on, and to the Canoe Beach Recreation Area are described with greater particularity in the Order and shown on the Plan. *See* Exhibit A.

15. The easement rights sought to be taken by the Town in the East Point Easement Areas are described with greater particularity in the Order ("**Easement Rights**"). *See* Exhibit A.

16. In addition to the Easement Rights, the Town seeks the right to impose certain restrictions on the use and activities within the boundaries of the East Point Easement Areas to protect and preserve the East Point Easement Areas for the conservation and recreation purposes as set forth herein and described with greater particularity in the Order ("**Conservation Restrictions**").

17. The purposes for which the takings by eminent domain are to be made are valid public purposes in accordance with the 5th Amendment to the Constitution of the United States and Article X of the Declaration of Rights to the Massachusetts Constitution.

18. The description of the land areas of the East Point Easement Areas in the Order, and their respective locations as shown on the Plan, and as are set forth in this Petition, are sufficiently accurate for identification.

19. On May 15, 2021, at a lawfully noticed and duly convened Special Town Meeting, the citizens of the Town approved Article 22 of the Annual Town Meeting Warrant with a super-majority vote, 647 to 271, authorizing the Town's Board of Selectmen ("**Board**") to acquire by gift, negotiated purchase, or by eminent domain under G. L. c. 80A, the fee simple or any lesser interest in all or a portion of the Undeveloped Parcel and Canoe Beach. *See* Town Meeting Warrant, attached as **Exhibit B**.

20. On September 8, 2021, at a lawfully noticed and duly convened meeting of the Board, in accordance with the authority of Town Meeting, the Board voted to adopt the Order, declaring its intent to take by eminent domain the Conservation Easement and the Access Easement ("**Taking**") and impose the Conservation Restrictions.

21. At its meeting on September 8, 2021, the Board voted to estimate the award of damages in the amount of Two Million Two Hundred Ten Thousand Dollars ($2,210,000), said award constituting full, fair, sufficient and just compensation due all persons with an interest in the Undeveloped Parcel and in Canoe Beach or who were damaged in their property as a result of the Taking.

22. The Order includes an estimate of damages resulting from the Taking in the amount of Two Million Two Hundred Ten Thousand Dollars ($2,210,000).

23. The estimate of damages set forth in the Order is full, fair, sufficient and just compensation to all persons with an ownership interest in the Undeveloped Parcel and Canoe Beach and to those persons with an interest in that or other property which may be damaged as a result of the Taking, in accordance with the 5th Amendment to the Constitution of the United States and Article X of the Declaration of Rights to the Massachusetts Constitution.

24. Entitlement to all or a portion of the award of compensation to any person with an ownership interest in the Undeveloped Parcel and in Canoe Beach, or in other property damaged as a result of the Taking, is subject to proof of title.

25. Private ownership interests in the Undeveloped Parcel, and therefore entitlement to just compensation or damages resulting from the Taking sought in this Petition, are undetermined.

26. Private ownership interests in Canoe Beach, and therefore entitlement to just compensation or damages resulting from the Taking sought in this Petition, are undetermined.

27. Northeastern is the owner of the MSC Parcel.

28. Northeastern is a person appearing of record to have an interest in the Undeveloped Parcel and Canoe Beach where the East Point Easement Areas are located and from which the Conservation Easement and the Access Easement are to be taken and on which the Conservation Restrictions are to be imposed.

29. Notice of adoption of the Order was sent forthwith to Northeastern by registered mail on September 9, 2021, with a copy of the Order and Plan. The Notice by mailing is attached hereto as **Exhibit C**.

30. Notices of adoption of the Order were posted in conspicuous places on the Undeveloped Parcel and Canoe Beach on September 10, 2021. The Notice by posting is attached hereto as **Exhibit D**.

31. On September 10, 2021, less than ten (10) days after adoption of the Order, the Town caused the Order, together with the Plan, to be filed for registration at the Essex Registry District of the Land Court, document #629107. *See* Exhibit A.

32. This Petition is being filed in Essex County Superior Court less than ten (10) days after the Order was filed for registration at the Essex Registry District of the Land Court.

WHEREFORE, Petitioner prays that this Court:

1) Issue an Order of Notice as required by G. L. c. 80A, §4;

2) Enter an order establishing the right of the Town to make the Taking of the rights and interests in the land areas as described with greater particularity in this Petition and in the Order, in accordance with G. L. c. 80A, §§ 4, 8;

3) Enter an order establishing the right of the Town to impose the Restrictions in the land areas as described with greater particularity in this Petition and in the Order, in accordance with G. L. c. 80A, §§ 4, 8;

4) Enter an order that the estimate of damages as set forth in this Petition and in the Order is sufficient and just compensation to all persons damaged in their property as a result of the Taking, in accordance with the 5th Amendment to the Constitution of the United States and Article X of the Declaration of Rights to the Massachusetts Constitution;

5) Should the Respondent be aggrieved by the sufficiency of the compensation or damages as stated in this Petition and the Order, have three (3) disinterested persons appointed as commissioners to determine the amount of compensation or damages owed resulting from the Taking, in accordance with G. L. c. 80A, § 8;

6) In the event a person is aggrieved by the commissioners' determination of the amount of compensation or damages owed, convene a trial by jury for a redetermination of said compensation or damages, in accordance with G. L. c. 80A, § 9;

7) Determine and declare entitlement of any and all persons to all or a portion of the damages resulting from the Taking who may claim an interest in the Undeveloped Parcel, the East Point Easement Areas, or who are damaged in their property as a result of the Taking,; and

3) Grant such other and further relief as the Court deems appropriate and just.

[Signature of Counsel on Following Page]

TOWN OF NAHANT,
By its attorneys,
GREENBERG TRAURIG LLP

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Email: mastermanj@gtlaw.com
ponsettoj@gtlaw.com

Dated: September 16, 2021

Exhibits to be attached

Exhibit A: Order of Intention to Take and Plan, with recording references
Exhibit B: 2021 Annual Town Warrant
Exhibit C: Notice of Adoption of Order of Intention to Take, mailed
Exhibit D: Notice of Adoption of Order of Intention to Take, posted

EXHIBIT A

Southern Essex District Registry
09/10/2021 03:35 PM TAKE Pg 1/13
ID: 1409444 Doc: 629107 (47172)
eRecorded

COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS. TOWN OF NAHANT

ORDER OF INTENTION TO TAKE
CONSERVATION EASEMENT BY EMINENT DOMAIN

At a regularly convened meeting of the Select Board of the Town of Nahant held on this 8th day of September, 2021, it was voted and ordered:

The Board of Selectmen of the Town of Nahant (the "**Town**"), duly elected, qualified, and acting as such, on behalf of the Town by virtue of and in accordance with the authority of the provisions of Chapter 80A of the General Laws, as amended, and of any and every other power and authority which is hereunto in any way enabling, hereby gives notice of its intention to take and acquire by eminent domain in perpetuity those certain rights, restrictions and easements set forth below for the benefit of the general public in portions of the property supposedly owned by Northeastern University (hereinafter, together with its successors and assigns, the "**Owner**"), located at and commonly known as and numbered 430 Nahant Road, Nahant, Massachusetts, more particularly described in **Exhibit A** attached hereto and incorporated herein by this reference (the "**Property**"). For title to the Property, see deed recorded with the Essex Southern Registry District of the Land Court (the "**Registry District**") with Certificate of Title No. 47172 and as shown on Land Court Plan No. 6813B, Lot 2.

The purpose of this taking is to preserve the East Point Easement Areas (as hereinafter defined) in perpetuity in their natural, scenic, and open condition and to protect against any use of the East Point Easement Areas that will interfere with the conservation values of said property. The public benefits resulting from conservation of the East Point Easement Areas (collectively the "**Conservation Values**") include, without limitation: the preservation of open space for the use and enjoyment of the general public, the creation and buffering of an expanded Henry Cabot Lodge, Jr. Memorial Park, a public park on Town owned land immediately abutting the East Point Easement Areas as shown on the Plan as Town of Nahant Parcel 1C-0-1 "Lodge Park" ("Lodge Park"), the protection of the scenic and natural beauty and character of the East Point Easement Areas, the protection of public access to the sea, the protection of wildlife habitat, wildlife connectivity and biodiversity, the reduction of pollution and improvement of air quality, the provision of a buffer to sea level rise, the promotion of resiliency and protection against climate changes, and the protection of the public passive recreational use of the land.

Pursuant to said authority, the Town intends to take and acquire for the benefit of the general public:

A. a permanent non-exclusive easement in perpetuity (the "**Conservation Easement**") for conservation purposes (as set forth more particularly in Sections 1 and 3 below), including, in particular, the right of the public to access and use, for outdoor recreational purposes, in, on, to and under the two parcels of land identified as "Conservation Easement (A)" ("**Conservation Easement Area A**") and "Conservation Easement (B)" ("**Conservation**

Easement Area B" and, together with Conservation Easement Area A, the "**Conservation Easement Areas**") on that certain plan of land entitled "Easement Plan of Land East Point in Nahant, MA Prepared for Inhabitants of Town of Nahant, 334 Nahant Road, Nahant, MA 01908" dated April 8, 2021, by Marchionda & Associates, L.P. (the "**Plan**"). The Plan is to be filed for registration with the Registry District herewith, and a copy of the Plan will be maintained in the offices of the Town. As shown on the Plan, Conservation Easement Area A is comprised of 2.648 acres of land to the line of Mean High Water, more or less, and includes the abutting tidelands, and Conservation Easement Area B contains 9.626 acres of land to the line of Mean High Water, more or less, and includes the abutting tidelands. The Conservation Easement specifically excludes the Owner Permitted Improvements (as hereinafter defined);

B. a permanent non-exclusive access easement (as set forth more particularly in Sections 2 and 3 below, the "**Access Easement**"), including in particular the right of public to access and use, for outdoor recreational purposes, in, on and to the parcel of land shown on the Plan as "Town Access & Egress Easement" (the "**Canoe Beach Recreation Area**" and, together with the Conservation Easement Areas, the "**East Point Easement Areas**"), containing 0.799 acres of land to the line of Mean High Water, more or less, and includes the abutting tidelands, the terms of which Access Easement are set forth in Section 2 below; and

C. the right to impose certain restrictions on the use and activities within the East Point Easement Areas (as set forth more particularly in Section 3 below, the "**Conservation Restrictions**").

1. Town's Permitted Rights under the Conservation Easement

The Conservation Easement to be taken shall include the following rights:

(a) Passive Recreation. The right of access to and use of, and the right to allow members of the public to access and use, the Conservation Easement Areas for passive recreational purposes, including, without limitation, for walking, hiking, jogging, cross-country skiing, bird watching, wildlife observation, photography, fishing, sketching, painting, bathing, swimming and other similar passive non-motorized recreational activities that do not materially alter the landscape and do not degrade environmental quality;

(b) Trails. The construction, marking, clearing and maintenance of trails, paths and boardwalks within the Conservation Easement Areas, or the relocation or alteration of the same, provided that any construction, relocation, or alteration results in trails that are no wider than six (6) feet;

(c) Minor Improvements. Making minor and/or customary improvements to the Conservation Easement Areas for the purpose of facilitating non-commercial outdoor recreational and/or educational activities, such as kiosks, interpretive signs, viewing platforms, benches, and picnic tables for the enjoyment of the public, provided such improvements do not include any buildings or any structures that need a foundation, and

such improvements do not negatively impact the Conservation Values of the Conservation Easement Areas;

(d) Fences. The erection and maintenance of open-faced (i.e., sight-pervious) fences, such as wooden split rail, for property boundary delineation, safety reasons, and trail demarcation within the Conservation Easement Areas, so long as said fences do not impede free wildlife passage;

(e) Signs. Constructing, installing, maintaining, and replacing signs and informational kiosks with respect to the acts and uses permitted or prohibited hereunder, the purposes, the Conservation Values, trespass, public access, the identity and address of the Town's interest in the Conservation Easement Areas, boundary and trail markings, to acknowledge any gift, grant, or other applicable source of support provided for the conservation of the Conservation Easement Areas, and notice of such rules and regulations governing the use of the Conservation Easement Areas, as may be adopted from time to time by the Town;

(f) Non-Native or Nuisance Species. The removal of non-native or invasive species, the inter-planting of native species, and the control of noxious, nuisance, or non-native plant or animal species, in a manner that minimizes damage to surrounding, non-target species and preserves water quality. The terms "non-native" or "invasive species" shall be defined as a species that is non-native or alien to the ecosystem under consideration, and which is likely to cause economic or environmental harm or harm to human health. The term "nuisance species" shall be defined as a species that is likely to cause harm to human health, such as poison ivy, poison oak, and poison sumac;

(g) Vegetation Management. Maintaining vegetation, including the selective cutting and pruning of trees and shrubs, trimming, cutting, and mowing, and removing brush, all to prevent, control, and manage hazards, disease, insect or fire damage or to preserve the present condition of the Conservation Easement Areas, including vistas, woods, fence lines, trails and meadows;

(h) Composting. Stockpiling and composting stumps, trees, brush, limbs, and similar biodegradable materials originating on the Conservation Easement Areas;

(i) Natural Habitat and Ecosystem Management and Improvement. Conducting measures designed to preserve, maintain and restore native biotic communities, or to maintain, enhance or restore wildlife, wildlife habitat, ecosystem function, including wetlands, or rare or endangered species including planting native trees, shrubs, and other vegetation;

(j) Archaeological Investigations. Conducting archaeological activities, including without limitation archaeological research, surveys, excavation and artifact retrieval, but only in accordance with an archaeological field investigation plan, which plan shall also address restoration following completion of the archaeological investigation, prepared by or on behalf of the Town and approved in advance of such

activity, in writing, by the Massachusetts Historical Commission State Archaeologist (or appropriate successor official). A copy of the results of any such investigation on the Conservation Easement Areas is to be provided to the Owner;

(k) Motor Vehicles. The use of motorized vehicles (i) by the Town, only as reasonably necessary or customary, for the purpose of property maintenance and to exercise the rights set forth herein, but excluding any motorized recreation vehicles; (ii) as reasonably necessary or customary by police, fire prevention and/or emergency personnel or other government agencies carrying out their lawful duties; and (iii) individual transportation vehicles reasonably necessary or customary for the mobility of persons with physical limitations or disabilities. Motorized vehicles are to be kept on trails to the extent practicable; and

(l) Reserved Rights. The right to use the Conservation Easement Areas for uses and purposes incidental to the foregoing rights; the right to take measures to preserve and enhance the availability of open space in order to provide wildlife habitat, recreation opportunities, and protect natural resources, scenery, and character; to ensure that the Conservation Easement Areas will be preserved and maintained in perpetuity for conservation purposes, in a natural, scenic and undeveloped condition; and to prevent any use or change that would impair or interfere with their Conservation Values.

2. **Town's Permitted Rights under the Access Easement**

The Access Easement to be taken shall include the following rights:

(a) Access for Passive Recreational Purposes. The right to access and use the Canoe Beach Recreation Area, and the right to allow the public to access and use the Canoe Beach Recreation Area during daytime hours for passive recreational purposes, including, without limitation, for walking, hiking, jogging, cross-country skiing, bird watching, wildlife observation, photography, fishing, sketching, painting, bathing, swimming and other similar passive non-motorized recreational activities that do not materially alter the landscape and do not degrade environmental quality.

(b) Maintenance. While the Town assumes no responsibility for the care, maintenance and restoration of the Canoe Beach Recreation Area, the Town reserves the right (but not the obligation) to maintain the Canoe Beach Recreation Area if the Town, in its sole and absolute discretion, deems such maintenance appropriate for the health, safety or enjoyment of the general public; and

(c) Motor Vehicles. The use of motorized vehicles (i) by the Town, only as reasonably necessary or customary, for the purpose of property maintenance if undertaken by the Town and to exercise the rights set forth herein, but excluding any motorized recreation vehicles; (ii) as reasonably necessary or customary by police, fire prevention personnel or other government agencies carrying out their lawful duties; and (iii) individual transportation vehicles reasonably necessary or customary for the mobility of persons with physical limitations or disabilities.

(d) Reserved Rights. The right to use the Canoe Beach Recreation Area for uses and purposes incidental to the foregoing rights, and the right to take measures to preserve and enhance the availability of open space in order to provide wildlife habitat, recreation opportunities, and protect natural resources, scenery, and character; to ensure that the Conservation Easement Areas will be preserved and maintained in perpetuity for conservation purposes, in a natural, scenic and undeveloped condition; and to prevent any use or change that would impair or interfere with their Conservation Values.

3. **Terms Governing Town's Conservation Easement and Access Easement.**

(a) The Town's Easement Rights (hereinafter defined) to be taken shall include the right to impose reasonable rules and regulations regarding public access to and use of the East Point Easement Areas, including, without limitation, the right to limit, restrict, or prohibit public access to all or any part of the East Point Easement Areas, temporarily or permanently, to protect sensitive ecological areas, to assure safety, for maintenance purposes, and as necessary or appropriate to ensure that public use is conducted in a manner that does not materially damage or adversely affect the Property or any Owner Permitted Improvements (as hereinafter defined), or impair in any meaningful way, the quiet use and enjoyment of the Property by the Owner and the Owner's guests and invitees, or the quiet use and enjoyment of neighboring properties by the owners thereof.

(b) The exercise of rights under the Conservation Easement and Access Easement (collectively the "**Easement Rights**") by the Town shall be in compliance with all applicable federal, state and local laws, rules, regulations, and permits.

(c) The Town shall be responsible for managing and maintaining the Conservation Easement Areas for the purposes herein specified, it being understood, however, that the Town shall have absolutely no responsibility (i) for managing or maintaining the Owner Permitted Improvements, such to remain the responsibility of the Owner, or (ii) for managing or maintaining the Canoe Beach Recreation Area, such to remain the responsibility of the Owner, or (iii) for the existing condition of the East Point Easement Areas on the date of taking, or (iv) for the presence on the East Point Easement Areas of hazardous materials or substances, or (v) for any acts not caused by the Town or its agents. The Town may, but shall not be required to, remove snow and ice from the Conservation Easement Areas.

4. **Conservation Restrictions**. Except to the extent permitted by or incidental to the exercise of the Easement Rights, the following rights and uses are to be taken, and are thereby prohibited in, on, to and under the East Point Easement Areas (the "**Conservation Restrictions**"):

(a) Constructing, or placing, any temporary or permanent structure, fixture, equipment or other improvement in, on, to, under, over or across the East Point Easement Areas, including without limitation any building, structure, fixture, asphalt or concrete

pavement, roads, signs, fences, gates, billboard or other advertising, antenna, utilities or other structures, utility pole, tower, solar panel, solar array, conduit, line, septic or wastewater disposal system, storage tank, or dam. The buildings, structures and other improvements in existence and located on the East Point Easement Areas on September 8, 2021 (the "**Owner Permitted Improvements**"), including, without limitation, the weather monitoring equipment located on Conservation Area A, the Murphy Battery (also known as the Murphy Bunker) as shown on the Plan, all other batteries and bunkers, and all other buildings or permanent structures, together with any existing fixtures and equipment located thereon and used in connection therewith, including without limitation, existing water and sewer lines and equipment, the existing storm water system and lines, and existing public or private electric, gas, communications or other utility services and distribution systems serving the same, are excluded from the taking and may remain and may be repaired and replaced, but may not be relocated, expanded or enlarged without the express written approval of the Town, which approval may be granted or denied in the Town's sole and absolute discretion, and provided that the following items are to be removed from the Conservation Easement Areas: (i) all free-standing (not mounted on the Murphy Battery itself) security cameras and other security devices located in the East Point Easement Areas and the poles or other structures on which they are mounted; (ii) all free-standing (i.e. not mounted on the Murphy Battery itself) lights and lighting stanchions or other structure on which they are mounted; (iii) any permanent or temporary fencing separating the Conservation Easement Area from Lodge Park or separating the Conservation Easement Area from the right of way/easement area providing access to Lodge Park by the general public, (iv) all construction barriers, equipment and debris; and (v) any building, structure or other improvement not otherwise permitted hereunder constructed or located on or under the Conservation Easement Areas after September 8, 2021.

(b) Excavating, dredging or removing from the East Point Easement Areas soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit or otherwise making topographical changes to the area, except in the case of the Canoe Beach Recreation Area, beach nourishment and restoration activities shall be permitted;

(c) Placing, filling, storing or dumping of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, tree and other vegetation cuttings generated off-site, waste or other substance or material whatsoever or the installation of underground storage tanks, utility lines or equipment, except the repair or replacement of Owner Permitted Improvements shall be permitted;

(d) Cutting, removing or otherwise destroying trees, grasses or other vegetation;

(e) Activities detrimental to drainage, flood control, water conservation, water quality, erosion control, soil conservation, natural habitat, archaeological conservation, or ecosystem function;

(f) Use, parking or storage of motorized vehicles including motorcycles, mopeds, all-terrain vehicles, trail bikes, or any other motorized vehicles on the East Point Easement Areas except for vehicles necessary for public safety (i.e., fire, police, ambulance, other government officials) in carrying out their official duties or as necessary for the mobility impaired;

(g) No portion of the East Point Easement Areas may be used towards building or development requirements on the Property or any other parcel. The development rights which are encumbered and extinguished by this Conservation Restriction shall not be transferred to any other property pursuant to a transferable development rights plan, cluster development plan, or otherwise;

(h) The use of the East Point Easement Areas for business, residential or industrial use, or commercial recreation. Notwithstanding the foregoing, the East Point Easement Areas may continue to be used for the purpose of non-invasive scientific research and study provided that such right is exercised in a manner that is otherwise permitted under the Easement Rights and is not inconsistent with the restrictions imposed hereby; and

(i) Any other use of the East Point Easement Areas or activity which is inconsistent with the purpose of the Conservation Restrictions or which would materially impair the Conservation Values of the East Point Easement Areas.

5. General Provisions

(a) The Easement Rights, the Conservation Restrictions, and all other terms, covenants, agreements and restrictions contained herein (collectively, the "**Conservation Provisions**") shall run with the land, and shall be enforceable in perpetuity against the Owner and all successors and assigns of the Owner holding any interest in the East Point Easement Areas.

(b) The Town and/or its duly authorized agents or representatives shall have the right, after giving prior written notice to the Owner (except in an emergency in which case notice shall be given as soon as is practicable), to take any and all actions with respect to the East Point Easement Areas as may be necessary or appropriate, with or without order of court, to remedy, abate or enforce any violation hereof unless the Owner has, prior to the expiration of thirty (30) days from the date of the Town's written notice, (i) halted the violation and remedied any damage caused by it, or (ii) given written notice to the Town reasonably addressing all alleged violations and setting forth a plan to remedy any such alleged violation, and provided that the Owner ceases the violation immediately upon receipt of notice of the violation and makes a good faith effort to remedy the violation, which shall occur no later than sixty (60) days from the date of the Town's notice. In instances where a violation may also constitute a violation of local, state, or federal law, the Town may notify the proper authorities of such violation.

(c) The Town shall have the right (but not the obligation) to enforce the Conservation Provisions by appropriate legal proceedings and to obtain compensatory relief, including without limitation, compensation for interim losses (i.e., ecological and public use service losses that occur from the date of the violation until the date of restoration) and injunctive and other equitable relief against any violations, including, without limitation, relief requiring restoration of the East Point Easement Areas to their condition prior to the time of the injury complained of (it being agreed that the Town may have no adequate remedy at law), and this right shall be in addition to, and not a limitation of, any other rights and remedies available to the Town. Any election by the Town as to the manner and timing of its enforcement of the Conservation Provisions shall not be deemed or construed to be a waiver of such rights. Notwithstanding the foregoing, the Town agrees that (except in the case of an emergency), the Town shall, prior to resorting to legal or equitable actions to enforce these Conservation Provisions, give the Owner written notice thereof and an opportunity to cure the same, as set forth above.

(d) Notwithstanding the foregoing, the Town shall not bring any actions against the Owner for any injury to or change in the East Point Easement Areas resulting from causes beyond the Owner's reasonable control, including but not limited to fire, flood, storm and earth movement, or from any prudent action taken by the Owner under emergency conditions to prevent, abate, or mitigate significant injury to the East Point Easement Areas resulting from such causes.

(e) The Conservation Provisions are for the public benefit and shall be perpetual and shall constitute a conservation restriction, as that term is defined in G.L. c. 184, § 31 and as that term is used in G.L. c.184, § 26, 31, 32 and 33. Further, the Conservation Provisions shall constitute an "other restriction held by a governmental body," as that term is used in G.L. c. 184, §26, which is not subject to the limitations on the enforceability of restrictions in G.L. c. 184, §§26-30.

(f) The rights taken hereby do not include the taking of any Owner Permitted Improvements within the East Point Easement Areas, but do include the right of the Town to remove and/or relocate existing water and sewer lines and equipment, the existing storm water system and lines, and existing public or private electric, gas, communications or other utility services and distribution systems serving the same, whenever necessary or convenient to exercise the rights taken hereunder, provided that: (i) such relocation shall not interrupt, interfere with or diminish the Owner's services with respect to the same except to a practicable minimum; (ii) such relocation shall be performed without cost to the Owner; (iii) such relocation shall be performed in compliance with all legal requirements; (iv) the Owner shall have been provided with not less than thirty (30) days written notice prior to the commencement of any such relocation work; and (v) materials used shall be reasonably equivalent to those replaced. Documentation of the relocated lines shall be the responsibility of the Town and shall be made available to the Owner.

(g) The Conservation Rights acquired by the Town pursuant to this Order of Taking are subject to the rights and easements reserved by the United States of America

in a deed recorded with the Registry District as Document No. 118926, to the extent said rights and easements are not released by Document No. 233710. Further, the taking shall not affect the rights of persons or parties holding easements and restrictions of record on the aforesaid East Point Easement Areas as of the date of filing of this instrument with the Registry District, including, without limitation, utilities owned by and easements held by public utility companies, including the easement set forth in Document No. 551568. Nor should this taking be construed as representing the existence or non-existence of any pre-existing rights of the public, if any, in and to the East Point Easement Areas.

(h) The lands affected by the easements taken hereby are owned or supposedly owned by the parties identified below:

University: Northeastern University
Property Address: 430 Nahant Road, Nahant, MA

Deed Reference: Essex South District Registry of Deeds, Certificate of Title No. 47172; Land Court Plan No. 681B, Lot 2.

If in any instance the name of such owner is not correctly stated herein, it is understood that in such instance the land referred to is owned by an owner or owners unknown to us.

6. **Damages.**

The Town estimates damages sustained by the Owner by reason of said taking to be in the amount of Two Million Two Hundred Ten Thousand Dollars ($2,210,000.00).

No improvements are to be made or betterments assessed under this taking.

[Signature Page Follows]

IN WITNESS WHEREOF, we, the duly elected and qualified Board of Selectmen of the Town of Nahant have hereunto set our hands on this 8th day of September, 2021.

TOWN OF NAHANT,
By its Board of Selectmen

Joshua Antrim, Chair

Eugene Canty, Vice Chairman

Mark Cullinan, Recording Secretary

COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

On this 8th day of September, 2021, before me, the undersigned notary public, personally appeared Joshua Antrim, Gene Canty and/or Mark Cullinan, member(s) of the Board of Selectmen of the Town of Nahant as aforesaid, proved to me through satisfactory evidence of identification, which was Known to me, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/they signed it voluntarily for its stated purpose on behalf of the Town of Nahant.

Diane M. Dunfee
Notary Public
My Commission Expires: April 22, 2027

DIANE M. DUNFEE
Notary Public
Massachusetts
My Commission Expires
Apr 22, 2027

EXHIBIT A

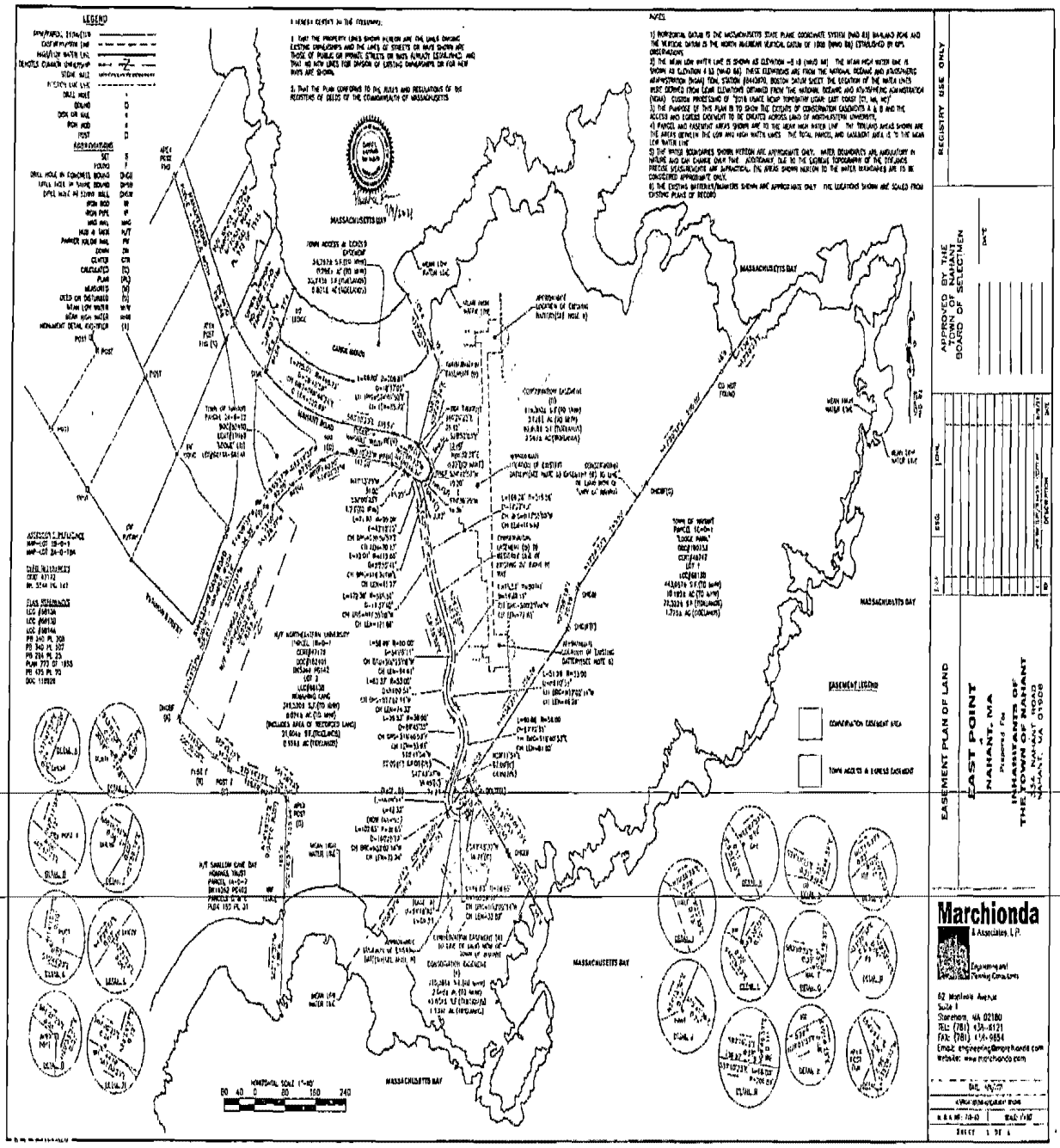
Description of Property

That certain parcel of land situated in NAHANT in the County of Essex and Commonwealth of Massachusetts, bounded and described as follows:

NORTHWESTERLY by Swallows Cave Road forty and 60/100 (40.60) feet;
NORTHEASTERLY one hundred (100) feet,
NORTHWESTERLY three hundred eighty three and 67/100 (383.67) feet, and
SOUTHWESTERLY sixty five and 71/100 (65.71) feet by land now or formerly of Francis I. Amory, Trustee and of Thomas P. Curtis
NORTHERLY by a private way and Nahant Road thirty five and 58/100 (35.58) feet;
NORTHWESTERLY on a curving line by the end of Nahant Road thirty five and 58/100 (35.58) feet;
SOUTHERLY by said Nahant Road four hundred seventy nine and 82/100 (479.82) feet;
NORTHWESTERLY by land now or formerly of Thomas P. Beal et al Trustees about twenty (20) feet; NORTHERLY, NORTHWESTERLY and NORTHERLY by Massachusetts Bay;
SOUTHEASTERLY about ten hundred fifty seven (1057) feet, and
NORTHEASTERLY about two hundred eighty (280) feet by lot 1, as shown on plan hereinafter mentioned;
SOUTHEASTERLY and SOUTHERLY by said Massachusetts Bay; and
WESTERLY about one hundred fifty six (156) feet, and
SOUTHERLY three hundred sixteen and 80/100 (316.80) feet by land now or formerly of Laurence Minot et al, Trustees.

All of said boundaries, except the water lines, are determined by the Court to be located as shown upon plan numbered 6813-B, drawn by Essex Survey Service, Inc., Surveyors, dated April 12, 1976, as modified and approved by the Court, filed in the Land Registration Office, a copy of a portion of which is on last mentioned plan. being lot 2 on pc 46747

The above described land is subject to a right of way, easements, covenants and provisions as described in deed from United States of America to Northeastern University, dated February 23, 1966, and filed as Document 118926 in said Registry, and shown on plan filed with said document.


EASEMENT PLAN OF LAND
EAST POINT
NAHANT, MA
Property Of
INHABITANTS OF
THE TOWN OF NAHANT
334 NAHANT ROAD
NAHANT, MA 01908
Marchionda & Associates, L.P.
Engineering Planning Consultants
62 Montvale Avenue
Suite 1
Stoneham, MA 02180
TEL: (781) 438-8121
FAX: (781) 438-8854
email: engineering@marchionda.com
website: www.marchionda.com
APPROVED BY THE
TOWN OF
NAHANT
BOARD OF SELECTMEN
DATE
REGISTRY USE ONLY
EASEMENT LEGEND
CONSERVATION EASEMENT AREA
TOWN ACCESS & EGRESS EASEMENT
MASSACHUSETTS BAY
HORIZONTAL SCALE 1"=40'

Document: 629107

TAKE

Southern Essex District ROD

RECEIVED FOR REGISTRATION

On: 09/10/2021 03:35 PM

Noted on Cert: 47172 Book: 214

RECEIVED

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss. SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO. 2177CV00936 A

TOWN OF NAHANT,	)
	)
Plaintiff	)
v.	)
	)
12.5 ACRES OF LAND +/-	)
SITUATED IN NAHANT,	)
MASSACHUSETTS,	)
	)
And	)
	)
NORTHEASTERN UNIVERSITY,	)
	)
Respondent	)
	)

RESPONDENT, NORTHEASTERN UNIVERSITY'S,
AMENDED ANSWER TO PETITION TO TAKE PROPERTY

Now comes the Respondent, Northeastern University ("Northeastern"), and hereby answers the Petition to Take Property of the Plaintiff, Town of Nahant ("Nahant"), and herein set forth its Answer as follows:

RESPONDENT'S ANSWER

1. This allegation states the Petitioner's legal position, and no response is required. To the extent a response is required, the Respondent denies that Nahant is entitled to the relief sought in the Petition.

JURY CLAIM

2. This paragraph is an assertion of a jury trial demand, which requires no response. Respondent states that it also demands a trial by jury should it be aggrieved by a

determination by commissioners appointed in this case.

JURISDICTION AND VENUE

3. The allegation is a conclusion of law for which no response is required.

PARTIES

4. The allegation is a conclusion of law for which no response is required.
5. Admitted.

ALLEGATIONS

6. The Respondent is without sufficient information to admit or deny the allegation.
7. The Respondent is without sufficient information to admit or deny the allegation.
8. The Respondent is without sufficient information to admit or deny the accuracy of the referenced Plan, which otherwise speaks for itself.
9. This allegation states the Petitioner's legal position, and no response is required. To the extent a response is required, the Respondent denies that Nahant is entitled to the relief sought in the Petition. Respondent further denies that the identified parcel is predominantly undeveloped.
10. The Respondent is without sufficient information to admit or deny the accuracy of the referenced Plan, which otherwise speaks for itself.
11. The Respondent is without sufficient information to admit or deny the accuracy of the referenced Plan or the Taking Order, which otherwise speak for themselves.
12. The Respondent is without sufficient information to admit or deny the allegation.
13. This allegation states the Petitioner's legal position, and no response is required. To the extent a response is required, the Respondent denies that Nahant is entitled to the relief sought in the Petition.

14. The Respondent is without sufficient information to admit or deny the accuracy of the referenced Plan, which otherwise speaks for itself. The Respondent denies that the Petitioner has the right to take the referenced easement.
15. The Respondent is without sufficient information to admit or deny the accuracy of the referenced Plan, which otherwise speaks for itself. The Respondent denies that the Petitioner has the right to take the referenced easement.
16. The Respondent is without sufficient information to admit or deny the accuracy of the referenced Plan, which otherwise speaks for itself. The Respondent denies that the Petitioner has the right to impose the referenced restrictions.
17. Denied.
18. The allegation asserts a conclusion of law for which no response is required. The Respondent further states that it is without sufficient information to admit or deny the accuracy of the referenced Plan, which otherwise speaks for itself. The Respondent denies that the Petitioner has the right to take the referenced easement.
19. The Respondent is without sufficient information to admit or deny that the Special Town Meeting was lawfully noticed, duly convened or that the vote was properly conducted and calls upon the Petitioner to prove the same.
20. The Respondent is without sufficient information to admit or deny that the Board of Selectmen Meeting was lawfully noticed, duly convened or that the vote was properly conducted or in accordance with the authority of Town Meeting and calls upon the Petitioner to prove the same.
21. The Respondent is without sufficient information to admit or deny the factual allegations set forth in paragraph 21 but denies that the referenced estimated award represents just or

reasonable compensation for the interests that the Petitioner seeks to take by eminent domain.

22. The referenced document speaks for itself. The Respondent denies that the referenced estimated award represents just or reasonable compensation for the interests that the Petitioner seeks to take by eminent domain.
23. Denied.
24. The allegation states a conclusion of law for which no response is required.
25. Denied.
26. Denied.
27. Admitted.
28. Respondent admits that it is the owner of the real property that the Petitioner is seeking to impose easements and restrictions and denies that such easements and restrictions can lawfully be imposed.
29. The Respondent is without sufficient information to admit or deny the allegation.
30. The Respondent is without sufficient information to admit or deny the allegation.
31. The Respondent is without sufficient information to admit or deny the allegation.
32. The Respondent is without sufficient information to admit or deny the allegation.

FURTHER ANSWER PURSUANT TO G.L. c 80A, §5

Pursuant to G.L. c. 80A, §5, Respondent further states the following as part of its Answer:

1. The Respondent Denies the right of the petitioner to make the improvement or take or damage its land.
2. The Respondent hereby impugns the validity or regularity of the proceedings for

establishing the improvement or taking property by eminent domain. Specifically, the proposed taking is being pursued in bad faith; not for a *bona fide* public purpose; to benefit private individuals or entities; to gain negotiating leverage against Northeastern regarding permitting issues; to stop a lawful development project protected under the Dover Amendment for improper purposes, including to avoid infrastructure costs. Respondent reserves the right to amend this Answer to assert additional challenges to the validity of the proposed taking that are disclosed by discovery in this matter.

3. The Respondent denies the sufficiency of the compensation or damages allotted to it in the estimate of the board and claims$50,000,000 in damages. This damages claim is made without prejudice and subject to the specific agreement in Court by the Respondent, Petitioner and the Court on December 1, 2021 that the damages claim may be amended at such time as the Respondent's valuation experts complete their work and that, if so amended, the Petitioner cannot use this initial claim against the Respondent in this proceeding in any manner, including but not limited to its opening, direct examination, cross-examination or its closing.

AFFIRMATIVE DEFENSES

First Affirmative Defense

The Petition fails to state a claim for which relief may be granted.

Second Affirmative Defense

The Petition should be dismissed due to a prior pending action in Massachusetts in which a predicate issue to this case must be decided.

Third Affirmative Defense

The Petitioner is estopped from bringing this petition, because it is currently arguing in a separate proceeding that the property subject to this in rem procedure has already been appropriated to public use, which argument, if accepted by the Court, would preclude the Petitioner from taking the subject property.

Fourth Affirmative Defense

The Petitioner is precluded from taking the subject property, because of the absence of a non-pretextual public purpose associated with the taking.

Fifth Affirmative Defense

The Petitioner is precluded from taking the subject property, because the purpose of the proposed taking is to benefit and/or made at the behest of private parties, and consequently, the taking is invalid.

Sixth Affirmative Defense

The Petitioner is precluded from taking the subject property, because the purpose of the proposed taking is to stop a pending private project to avoid incurring infrastructure costs, and consequently, the taking is invalid.

Seventh Affirmative Defense

The Petitioner is precluded from taking the subject property, because the purpose of the proposed taking is to gain leverage over the Respondent with respect to a dispute over zoning or permitting disputes, and consequently, the taking is invalid.

Eighth Affirmative Defense

The Petitioner is precluded from taking the subject property, because the proposed taking is being undertaken in bad faith by the Petitioner and consequently, the taking is invalid.

WHEREFORE, Northeastern prays this Honorable Court:

A. Enter Judgment in Northeastern's favor;

B. Deny Nahant's request for an Order authorizing it to take the Subject Property by eminent domain;

C. Alternatively, award Northeastern just and reasonable compensation for the taking of the Subject Property in an amount determined by the Commissioners or by a jury if a party claims a jury trial after the Commissioners' decision;

D. Order that Nahant pay Northeastern indemnity in full of its damages resulting form the filing of this action in the event that Nahant abandons the Petition pursuant to G.L. c. 80A, §11.

E. Award Northeastern its costs and expenses of litigation, including but not limited to reasonable attorneys' fees;

F. Issue such other relief as is just and equitable.

JURY TRIAL DEMAND

Northeastern demands a trial by jury on all counts so triable.

Respectfully Submitted,

NORTHEASTERN UNIVERSITY,

By its Attorneys,

By: */s/ George A. McLaughlin, III*

George A. McLaughlin, III
BBO No. 544822
Joel E. Faller
BBO No. 659474
The McLaughlin Brothers, P.C.
One Washington Mall, 16th Floor
Boston, MA 02108
(617) 523-7165

Kevin P. O'Flaherty (BBO #561869)
Goulston & Storrs, PC
400 Atlantic Avenue
Boston, MA 02110-3333
(617) 482-1776

Dated: December 17, 2021

CERTIFICATE OF SERVICE

I, Joel E. Faller, hereby certify that I have on this 17th day of December, 2021, served the foregoing by emailing a copy thereof to James D. Masterman and James Ponsetto at mastermanj@gtlaw.com and ponsettoj@gtlaw.com.

By: */s/Joel E. Faller*
Joel E. Faller

38

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO. 2177C000936

TOWN OF NAHANT,

Plaintiff,

v.

12.5 ACRES OF LAND+/- SITUATED IN NAHANT, MASSACHUSETTS,

and

NORTHEASTERN UNIVERSITY,

Respondent

FILED
ESSEX SUPERIOR COURT
2023 NOV 17 P 2:32

TOWN OF NAHANT'S MOTION FOR SUMMARY JUDGMENT REGARDING NORTHEASTERN UNIVERSITY'S CHALLENGE TO THE VALIDITY OF THE TOWN'S ORDER OF INTENTION TO TAKE BY EMINENT DOMAIN PURSUANT TO G.L. c. 80A

Pursuant to Massachusetts Rule of Civil Procedure 56, the Town of Nahant ("Town" or "Nahant") moves for summary judgment on its petition to take by eminent domain a conservation easement over undeveloped land owned by Northeastern University ("NU") in an area of Nahant called East Point. As set forth in the Town's accompanying Memorandum of Law and Statement of Facts in support of this Motion, the Town has promoted the conservation and preservation of East Point for 60 years. Since 1991, East Point has been zoned as part of Nahant's Natural Resource Zoning District, the purpose of which is to preserve the Town's natural resources. Despite this deep commitment to the conservation of East Point, NU seeks to develop the land it owns on East Point to include a 55,000 square foot building, extensive parking, and a geothermal wellfield that will span over an acre. Nahant residents overwhelmingly support preservation, and,

at Nahant's Annual Town Meeting in 2021, a supermajority voted to authorize taking the conservation easement. The Town, acting through its Board of Selectmen, subsequently initiated eminent domain proceedings pursuant to G. L. c. 80A.

The undisputed evidence shows that the Town is entitled to take the conservation easement to further its longstanding interest in protecting the ecology of East Point and maintaining the land as open, preserved space for the benefit of the abundant and diverse plants and wildlife that live there, as well as the enjoyment of Nahant's residents. It is well established that conservation is a valid public purpose supporting an eminent domain taking. Moreover, the Town complied with Chapter 80A in effectuating the taking.

NU challenges the taking, arguing it was made in bad faith because private individuals will benefit from the taking, and the Town used private donations to partially fund the taking. Both arguments ignore the longstanding Massachusetts law. First, because any hypothetical benefit to private persons due to the taking are purely incidental and do not invalidate that the primary and dominant purpose of the taking is a valid public purpose. Second, the Town's use of private donations is in accord with 200 years of Massachusetts law approving of the use of private funds for eminent domain takings. Thus, neither the evidence nor the law supports a finding of bad faith.

Accordingly, and as set forth in detail in the Town's Memorandum of Law, Nahant is entitled to summary judgment and an order establishing its right to take the conservation easement.

Dated: September 15, 2023

Respectfully submitted,

TOWN OF NAHANT,

By its attorneys,

James D. Masterman, Esq. (BBO #324000)
James P. Ponsetto, Esq. (BBO #556144)
GREENBERG TRAURIG LLP
One International Place, Suite 2000
Boston, MA 02110
Tel.: (617) 310-6284
Email: mastermanj@gtlaw.com
ponsettoj@gtlaw.com

RULE 9C CERTIFICATION

I hereby certify that, on September 1, 2023 at approximately 3:00 PM, I conferred by telephone with Joel Faller, counsel for Northeastern, for 15 minutes in a good faith effort to narrow the areas of disagreement concerning dispositive motion practice over Northeastern's challenge to the validity of the taking by eminent domain. Counsel were unable to narrow the areas of disagreement, other than with respect to collaboration on the appendix of exhibits and other supporting materials.

/s/ James P. Ponsetto
James P. Ponsetto, Esq.

CERTIFICATE OF SERVICE

I hereby certify that, on September 15, 2023, this document was served by email and first-class mail on counsel for all parties who have appeared in this action or on the parties if no appearance has been entered.

/s/ James P. Ponetto
James P. Ponsetto, Esq.

38.1

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO. 2177C000936

TOWN OF NAHANT,

Plaintiff,

v.

12.5 ACRES OF LAND+/- SITUATED IN NAHANT, MASSACHUSETTS,

and

NORTHEASTERN UNIVERSITY,

Respondent

FILED
ESSEX SUPERIOR COURT
2023 NOV 17 P 2:32

MEMORANDUM OF LAW IN SUPPORT OF TOWN OF NAHANT'S MOTION FOR SUMMARY JUDGMENT REGARDING NORTHEASTERN UNIVERSITY'S CHALLENGE TO THE VALIDITY OF THE TOWN'S ORDER OF INTENTION TO TAKE BY EMINENT DOMAIN PURSUANT TO G.L. c. 80A

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INTRODUCTION

At the Annual Town Meeting ("ATM") in May 2021, the citizens of the Town of Nahant ("Town" or "Nahant") voted overwhelmingly to protect the natural beauty of East Point by authorizing its Board of Selectmen ("Board") to take by eminent domain a conservation easement in an undeveloped 12.5± acre portion of a larger 20.4± acre parcel owned by Northeastern University ("NU"). The Board voted in September 2021 to adopt an Order of Intention to Take Conservation Easement ("Order"), pursuant to G.L. c. 80A ("Chapter 80A"). The ATM action, and the Board vote which followed, are manifestations of more than 60 years of Nahant's interest in the preservation and protection of East Point as public open space and conservation land.

Chapter 80A authorizes NU to contest the taking by "impugn[ing] the validity or regularity of the proceedings." G. L. c. 80A, §§ 5(3) and 7. While an inherent attribute of sovereignty, it is axiomatic that "[e]xercising the power of eminent domain is improper unless the taking is for a public purpose." *Benevolent & Protective Order of Elks, Lodge No. 65 v. Planning Bd: of Lawrence*, 403 Mass. 531, 539 (1988) ("*Elks*"); *Burnes v. Metropolitan Dist. Commn.*, 325 Mass, 731, 734 (1950). Under *Pheasant Ridge Associates LP v. Burlington*, 399 Mass. 771 (1987) ("*Pheasant Ridge*"), which involved a taking under G.L. c. 79, "bad faith" is a "defense" to a taking under Chapter 80A. *See* Order of Karp, J. (Dkt #25). NU has raised the bad faith defense to the intended taking, alleging that the conservation purposes are pretextual hiding the true, unlawful motives or improper reasons of the Town. For NU to prevail, it would have this Court ignore the Town's longstanding interest in preservation of East Point, in which it had considered NU a partner, and attribute improper motives to its citizens' near total consensus at a town meeting for a taking by eminent domain when the treasured public resource was threatened by NU itself. The SJC instructs that courts "should not easily attribute improper motives to a town and to its

citizens voting at town meeting if there were valid reasons that would have supported the town's action." *Pheasant Ridge*, 399 Mass. at 777. That is the case here.

The material facts, none of which can reasonably be disputed, demonstrate that the true intention of the Town is to preserve East Point, evidenced not only by the vote of the 2021 ATM but by actions of Nahant's Open Space Committee, Conservation Commission, Community Preservation Committee, Finance Committee, Planning Board, and the Board of Selectmen, and in citizen surveys, citizen petitions, and public comments. Conservation is a valid public purpose for which takings may be made. It is the true and a proper motive for the taking in Nahant even if that means stopping NU's expansion plans or conferring some incidental private benefit.

The Town is, therefore, entitled to summary judgment.

FACTUAL BACKGROUND

1. The History and Ecology of East Point

Nahant: Nahant is a small, densely populated town on a peninsula into Massachusetts Bay connected to the mainland by a single causeway. Town's Statement of Facts ("SoF") ¶¶ 1-4.[1] The developed land area of Nahant is residential with less than 1% industrial and commercial. SoF ¶¶ 2, 4. The remaining land is preserved as public open space for active and passive recreation, conservation, beach, and shoreline. *E.g.*, SoF ¶¶ 3, 6, 51, 54, 58, 61, 65, 73, 106, 116. Nahant's governance is by open town meeting; its executive branch is the 3-member Board. SoF ¶ 5.

East Point: East Point is a 28.44± acre promontory at the easternmost tip of Nahant accessible by a single road. SoF ¶¶ 6-7. East Point consists of 20± acres characterized by coastal open space, beach, meadow, woodland, shoreline, cliffs, various wildlife habitats and public

[1] References to the SoF include exhibits supporting the SoF.

parkland. SoF ¶¶ 3, 6, 8-10, 17-19, and 21. The remaining 8± acres are used by NU for its Marine Science Center. SoF ¶¶ 10-12, 16.

Before 1941, East Point was privately owned. SoF ¶ 22. In 1941, the federal government acquired East Point by eminent domain for military purposes, making related improvements including construction of several bunkers (or batteries), one of which is named the Murphy Bunker. *Id.* In the early 1960's, the military facility was decommissioned, and the General Services Administration ("GSA") made the property available for sale. SoF ¶¶ 23-26. In 1963, the Town applied to acquire East Point for a public park. *Id.* GSA approved. *Id.* At the 1964 ATM, where the importance of preserving East Point in public ownership was widely supported by residents and the Town's Conservation Commission ("ConCom"), the cost of acquisition proved too high, and the warrant article was indefinitely postponed. SoF ¶¶ 27-28.

Nevertheless, the Town remained committed to preserving East Point and public access to the area. SoF ¶¶ 32-33. An educational institution was considered a more compatible user and responsible custodian. The East Point subcommittee of the ConCom maintained that "as conservation aspects are concerned (namely preservation of the unusual beauty of this striking bit of unspoiled cliff lined coastline)," it was in the Town's interest "to have the property pass to an educational institution such as [NU] particularly . . . if some assurance is given that only low lying or otherwise inconspicuous buildings are contemplated." SoF ¶ 32; Ex. 27, p. 1065. ConCom also sought to preserve "the right to walk along a scenic pathway . . .", upon sale to NU. Ex. 27, p. 1065. It was ConCom that called NU's attention to East Point. SoF ¶¶ 29-33.

The NU Property: In April 1965, NU proposed "to acquire [from the GSA] the whole of East Point in order to make it a wildlife preserve. Only in this way can the unusual littoral and benthonic faunas be protected adequately. In addition, [NU] can assure that pollution will not

jeopardize the continued high quality of the seawater for laboratory studies." SoF ¶ 30; Ex. 26, p. 1055. NU proposed to demolish the military buildings, except for a 20,000 square foot building that would be used for "wet laboratories and other research areas." *Id.* at 1055-56. In February 1966, NU acquired 20.4± acres of East Point ("NU Property"). SoF ¶¶ 10, 34. It was transferred to NU at no cost, an offer not made to the Town. Ex. 26, p. 1049; Ex. 30, p.1089. GSA retained 8.3± acres, which later became the Town's Lodge Park, together with an access easement through the abutting NU Property without which the remaining parcel would be landlocked. SoF ¶¶ 34-36.

Lodge Park: In 1974, GSA put up for sale the remaining 8.3± acre parcel. SoF ¶¶ 37-39. After failing to acquire the larger parcel 10 years earlier, the Town again showed its interest in East Point by seeking to acquire this parcel for public "[p]assive recreation, or in simple terms as a scenic overlook, with the possibility of use as a picnic area"; "[e]ducational purposes . . . for limited studies in ecological, marine biological and photography classes"; and "[t]he preservation of open space in the Town." SoF ¶ 40; Ex. 33, p. 1136. NU competed with the Town so it could add the parcel to its private domain while representing to the GSA that it would acquire the parcel for the "protection of the area and its preservation in the natural state." SoF ¶ 39; Ex. 32, pp. 1113-1115. GSA sold to the Town in 1975 for $115,000, together with the access easement over the NU Property. SoF ¶ 41; Ex. 34, p. 1139.

In 1989, ConCom issued a request for proposal for work to "reestablish the flora and scenic character...the natural plant material...maximize vistas for [bird watching] without disrupting the activities of the fauna..." of Lodge Park. SoF ¶ 46-47; Ex. 36, p. 1148. The Town completed the restoration project in 1997. SoF ¶ 50. Stewardship of the public park was delegated to the Open Space Management and Land Acquisition Committee ("Open Space Committee"). SoF ¶ 45.

East Point's Limited Development: East Point has remained largely undeveloped since the mid-1960's. SoF ¶¶ 65, 74. NU's Marine Science Center ("MSC") is located westerly of the Murphy Bunker on 8.02± acres. SoF ¶ 12. The MSC has several buildings and related structures with accessory paved parking. The repurposed Murphy Bunker contains labs and classrooms. SoF ¶ 16. Since 1966, no permanent structure has been built on or east of the Murphy Bunker. An observatory on top of the Murphy Bunker was built in 1995 and later removed. SoF ¶ 17.

Nahant Open Space Plans and Citizen Surveys: When the Open Space Committee was organized by the 1988 ATM, its responsibilities included preparation of an open space management plan and the study of acquiring land for public use. Ex. 1, p. 0005. To do so, the Open Space Committee conducted surveys of Nahant residents to measure the importance of open space and conservation generally, and of East Point in particular, to the people of Nahant. According to the results of surveys reported in 1989, 2000 and 2008 in the Town's Open Space Plans (SoF ¶¶ 59, 63, 71), East Point and Lodge Park are among the most popular locations in town for recreation (Ex. 1, p. 0027; Ex. 2, pp. 0041, 0074, 0104; Ex. 3, p. 0147 (relying on 2000 survey)). East Point is a place where Nahant residents "walk, hike, fish, pick flowers and star gaze" (SoF ¶¶ 55-56; Ex. 38, p. 1163) in what the Town and NU have referred to as "a wildlife sanctuary and ecological study area"[2] (Ex. 36, p. 1147; Ex. 20, p. 1030).

These surveys reflect what the people of Nahant have said about the importance of protecting East Point and are consistent with what they did in 2021. *See Pheasant Ridge*, 399 Mass. at 777 ("In determining the state of mind of a person or group of persons, we consider not

[2] NU's audio tour of East Point describes its geologic formations, types of animals, insects, and other organisms, and the wide varieties of plants. SoF ¶ 19; Ex. 18, p. 0994-0995.

only what they have said but we also draw inferences concerning their intentions from what they have done and what they have not done.").

In part based on those surveys, in 1989, 2000, 2008, and 2022, the Open Space Committee published Open Space Plans addressing conservation and preservation of Nahant open space. SoF ¶¶ 57-81. The Open Space Plans identify the NU Property as "Open Space Inventory" (Ex. 1, p. 0012) and part of an "Inventory of Lands of Conservation and Recreation Interest" (Ex. 2, p. 0116; Ex. 3, p. 0260). NU is described as committed to "maintain[ing] much of the land as an undeveloped ecological study area." Ex. 2, p. 0611; Ex. 3, p. 0167. The 2000 Open Space Plan concluded that "Nahant can ill afford to miss any further opportunities to protect open space. This is why the protection of existing resources is the single most compelling issue facing planning for open space." Ex. 2. p. 0076. The 2008 Open Space Plan recommended for acquisition "the important 'buffer' areas around East Point...," and that "conservation restrictions would help to increase the protections for open space in Nahant..." SoF ¶ 76; Ex. 3, p. 0155.

Nahant Zoning: The 1989 Open Space Plan recommended several ways to protect East Point, one of which is by zoning. SoF ¶ 80. A near-unanimous vote of the 1991 ATM, 69-3, the zoning district covering "East Point, including Canoe Beach, the Lodge Grant, the Lodge Park and land owned or controlled by NU," was changed from residential to Natural Resource. Non-conservation development is prohibited in the Natural Resource District. SoF ¶¶ 82-85; *see* Zoning Bylaw, Town of Nahant, Massachusetts, §§ 4.10.C-4.10.E (updated Oct. 7, 2021), *available at* https://nahant.org/clerk/charter-bylaws/ ("Nahant Zoning Bylaw") (prohibiting development in the Natural Resource District except for specific, enumerated purposes, all of which require special permitting); *see also* Argument Section 3.B.iii below.

2. NU's Development of East Point, Citizen Opposition and Environmental Review.

NU announced plans for its Coastal Sustainability Institute ("CSI Project") in 2018, making presentations to the Board on February 15 and December 11, 2018. SoF ¶¶ 88, 92. The CSI Project includes a 55,000 SF building atop and east of the Murphy Bunker. SoF ¶ 89. In the spring of 2018, 1,683 Nahant residents and the Board voiced their opposition to the CSI Project if to be built on top and east of the Murphy Bunker by signing a petition in order "to preserve East Point as the conservation area it is today." SoF ¶ 106.

The CSI Project impacts the environment, thereby requiring preparation of an Environmental Notification Form ("ENF") Massachusetts Environmental Policy Act ("MEPA") to scope the extent of environmental review. SoF ¶ 95; Ex. 11, pp. 0772-0773. NU underplayed the size and complexity of the CSI Project in its first ENF which was rejected for improper segmentation requiring NU to submit a second ENF ("ENF #2"). SoF ¶¶ 95-97. About 500 public comments were submitted in response to ENF #2, the majority of which expressed concerns, if not outrage, about the "impacts to open space, wildlife and municipal infrastructure." SoF ¶¶ 99-100.

In response to ENF #2, the Secretary of the Executive Office of Energy and Environmental Affairs ("EEA") required NU to submit a Draft Environmental Impact Report ("DEIR") that scoped the entire project. Mirroring Nahant's Open Space Plan, the Secretary requested that NU "should consider placing a conservation restriction on a portion(s) of the site designated as open space" and "identify any impacts of the project design or construction on the access easement to Lodge Park." SoF ¶ 98. NU submitted its DEIR in November 2019 and a Final EIR in March 2020. SoF ¶¶ 101-102. The EEA Secretary's request that NU consider a conservation restriction on the open space areas was rejected. SoF ¶ 105.

Even before the environmental review was complete, in June 2019, NU started to clear lands east of the Murphy Bunker which it termed pre-construction and exploratory investigations

but in actuality altered 1,345± SF of wetlands. SoF ¶¶ 93-94. In order to preserve this area, Town citizens sought injunctive relief to halt further construction and the concomitant destruction of East Point's open space. *Id.*

3. The 2021 ATM Votes to Authorize the Board to Proceed with the Taking of the Conservation Easement With the Financial Backing of FinCom, the Community Preservation Committee and a Gift from the Nahant Preservation Trust.

In advance of the then scheduled May 2020 ATM (cancelled due to COVID), the Board declared its goal to save East Point as public open space once and for all:

> Today we announce that the [Board] is taking our first concrete step to permanently save the open space, woodlands, beaches and meadows making up the Wildlife Preserve at East Point...We are at the tipping point with the projected environmental impact to East Point...Our only goal is to save the Wildlife Preserve and rights to Canoe Beach.

SoF ¶ 116.

On August 21, 2020, the Board reiterated its goals in a "Second Statement." SoF ¶ 117. The Board then tabled the eminent domain warrant article until the 2021 ATM where it appeared on the Town Warrant as Article 22. SoF ¶ 134.

The Nahant Advisory & Finance Committee ("FinCom") reviews every ATM warrant article for financial impact and recommends to town meeting whether an article should be adopted. FinCom's concern is the Town's finances. SoF ¶¶ 128-129. But in considering whether to recommend approval of the 2021 ATM eminent domain article (Article 22), FinCom expressed its support by "recogniz[ing] the value of maintaining East Point as valuable open space and conservation land." SoF ¶¶ 131; Ex. 74, p. 1995. On May 15, 2021, FinCom voted 6-2 to recommend approval of Article 22 "subject to the receipt by the Town of grants or gifts in the amount of at least $3,000,000, or such larger amount as shall be required, together with the amount appropriated [by the CPC] ..." SoF ¶ 132.

The Nahant Preservation Trust ("NPT") is a non-profit charitable organization dedicated to "preserv[ing] Nahant's open spaces, historically significant property, and conservation lands for public and community benefit." About Us, Nahant Preservation Trust, https://www.nahantpreservationtrust.org/; SoF ¶ 108. In connection with the taking, the Town entered into three agreements with NPT. In the first two agreements, entered into in 2018 and 2020, NPT donated funds to the Town to pay for attorneys' fees associated with the taking. SoF ¶¶ 107, 109-110; Exs. 61, 62. In the other agreement reached in May 2021, NPT promised to donate $3,000,000 to the Town to use to acquire the land by eminent domain. Town Meeting and the Board voted to accept NPT's gifts. SoF ¶¶ 107-112.

Nahant adopted the Community Preservation Act ("CPA") and established a Community Preservation Committee ("CPC") to administer CPA funds for open space preservation, preservation of historic resources, development of affordable housing and the acquisition and development of outdoor recreational facilities. G.L. c. 44B. SoF ¶¶ 121-122. In March 2020, the Board applied to CPC for a $1.5 million grant to protect East Point:

> Preserving East Point…in perpetuity is essential. In doing so the Town will be able to protect this diverse eco-system and habitat…and to ensure Nahant's residents have access to the Wildlife Preserve, its coastline and the unmatched scenic views of the ocean . . . The Town of Nahant for over 30 years has devoted vast resources and decades of planning to protect it from development and to protect Lodge Park.

SoF ¶¶ 123-125.

Consistent with its statutory purpose, the CPC recommended that the 2021 ATM authorize borrowing of $1,500,000 to be paid back with CPA money to preserve East Point. SoF ¶ 126. The 2021 ATM adopted CPC Article 21V, 655-14. SoF ¶¶ 126-127, 135 and 137.

On the ultimate taking article, the 2021 ATM voted 647-271 to adopt Article 22 authorizing the Board to take and to fund the cost by accepting gifts of $3,000,000 or larger as may be required and the CPC appropriation. SoF ¶¶ 134, 136. *See also* Argument Sections 3.A and 3.B.i below

The Board voted to adopt the Order on September 8, 2021. SoF ¶ 138. The Petition was filed on September 16, 2021. SoF ¶¶ 138 and 140. *See also* Argument Section 1 below.

LEGAL STANDARD AND BURDENS OF PROOF

Summary judgment is warranted where there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law. *See* Mass. R. Civ. P. 56(c). When the moving party establishes the absence of a triable issue, the opposing party must demonstrate, through admissible evidence, an issue of material fact to defeat summary judgment. *Godbout v. Cousens,* 396 Mass. 254, 261 (1985). The nonmoving party cannot defeat summary judgment by "rest[ing] upon the mere allegations;" rather the opposition "must set forth specific facts showing that there is a genuine issue for trial." Mass. R. Civ. P. 56(e). "'[B]are assertions and conclusions'" based on "'understandings, beliefs, and assumptions are not enough to withstand a well-pleaded motion for summary judgment.'" *Benson v. Massachusetts Gen. Hosp.*, 49 Mass. App. Ct. 530, 532 (2000). The court views "the facts in the light most favorable to the nonmoving party." *Theos & Sons, Inc. v. Mack Trucks, Inc.*, 431 Mass. 736, 737 (2000). The existence of some factual dispute does not preclude summary judgment; the disputed fact must be material. *Cary v. New Eng. Organ Bank*, 446 Mass. 270, 278 (2006).

The Town filed the Petition to establish its right to take and has the burden of proving that it has complied procedurally with Chapter 80A. *See* Argument Section 1 below. NU challenges the taking as unlawful on the basis that the taking is not for a constitutionally valid public purpose.[3] G.L. c. 80A, § 5; *see* Am. Ans. at Further Answer ¶ 2 and Fourth, Fifth, and Eighth Aff. Defs. (Dkt. #15). Accordingly, NU has the burden of proving that the true intent of the Town's actions

[3] U.S. Const., 5th Amend., "nor shall private property be taken for public use, without just compensation;" Mass. Const., art. X, pt. 1., "whenever the public exigencies require that the property of any individual should be appropriated to public uses, he shall receive a reasonable compensation therefor."

is not the conservation of East Point but pretextually masked an illicit purpose or improper reason. *Dixon v. United States*, 548 U.S. 1, 2 (2006) ("[T]he one relying on an affirmative defense must set it up and establish it."); *DeWeese-Boyd v. Gordon Coll.*, 487 Mass. 31, 43 (2021) (same).

NU cannot carry its burden and that alone warrants summary judgment for the Town. But the Town need not rely solely on NU's failure to carry the burden of proof. The material facts in this case cannot reasonably be in dispute and convincingly demonstrate that the Town's taking is "truly intended" to protect and preserve East Point's natural beauty for public use and enjoyment in perpetuity—a valid public purpose. Any private benefit is merely incidental. *Pheasant Ridge*, 399 Mass. at 777-778.

1. The Town Complied with the Requirements of Chapter 80A.

At the outset, only if this Court finds that the Town complied with the procedures of Chapter 80A, would the Court then determine whether the purpose advanced for the taking is constitutionally valid. G.L. c. 80A, §§ 2, 5, 7. There can be no dispute that the Town complied with the Chapter 80A procedures which NU concedes by not raising the issue (*i.e.*, impugn regularity). The facts warrant the Court to so find.

The 2021 ATM met on May 15, 2021 and by a supermajority voted to adopt Article 22 authorizing the Board to acquire by eminent domain the fee simple or any lesser interest in portions of the NU Property for conservation purposes. SoF ¶¶ 133-137. On September 8, 2021, the Board voted to adopt the Order. SoF ¶¶ 138. The Order describes the property to be taken citing a plan of the taking areas ("Taking Plan") and contains the estimate of damages in the amount of $2,210,000 which the Board voted to award. SoF ¶ 139-141; Ex. 15, pp. 0873-0881. Following adoption, all Chapter 80A time deadlines were met. The Order and notice of its adoption were sent to NU by registered mail on September 9, 2021, and the following day notices were posted in conspicuous places. SoF ¶¶ 141-142. G.L. c. 80A, § 3. The Order and Taking Plan were filed for

registration at the Essex Registry District of the Land Court on September 10th. SoF ¶ 143. On September 16, 2021, the Petition was filed in this Court. G.L. c. 80A, § 4. (Dkt. #1). The Town has not taken property in at least fifty (50) years (SoF ¶ 139), and when it decided to do so in this case, it complied with the statutory procedure.

Though the Town followed Chapter 80A, NU may argue that just using Chapter 80A "was not in accord with its usual practices." *Pheasant Ridge*, 399 Mass. at 778. The *Pheasant Ridge* court was concerned that a town meeting vote was secured but bypassed prior consultation with the town's boards "as they normally would have been." *Id.* Here, prior to the 2021 ATM and the September 2021 Board vote, virtually every Nahant board, commission and committee was consulted, voted and supported the taking. And when the decision was made to take, Nahant complied with Chapter 80A to the letter. Compliance with the statutory requirements to effectuate a taking is evidence of good faith. *See Kelly v. Town of Chelmsford*, No. 06-P-1741, 2007 WL 3010153 at *2 (Mass. App. Ct. Oct. 16, 2007), *Rule 1:28 decision* (allowing summary judgment for the town where "[t]here [wa]s no evidence that the town did not follow its usual practices in conducting the taking; rather, there is evidence that the town followed the statutory procedure to institute the taking").

2. A Taking for Conservation of East Point Is a Valid Public Purpose.

It cannot be disputed that a taking by eminent domain for conservation is a constitutionally valid public purpose. Article 97 of the Amendments to the Massachusetts Constitution settled that question:

> The people shall have the right to clean air and water, freedom from excessive and unnecessary noise, and the natural, scenic, historic, and esthetic qualities of their environment and the protection of the people in their right to the conservation, development and utilization of the agricultural, mineral, forest, water, air and other natural resources *is hereby declared a public purpose*.

Id. (emphasis added); *see also Smith v. City of Westfield*, 478 Mass. 49, 50, 55 (2017) (Article 97 allows takings for conservation purposes); *Mahajan v. Department of Envtl. Protection*, 464 Mass. 604, 612, 615 (2013) ("Article 97 clearly states that its purposes are 'the conservation, development and utilization of the agricultural, mineral, forest, water, air and other natural resources'"; "[t]he critical question" is "whether the land was *taken for those purposes*, or subsequent to the taking was designated for those purposes" (emphasis in original)). Moreover, the Legislature anticipated that takings by eminent domain may be necessary for that purpose such "lands and easements or such other interests . . . as may be deemed necessary to accomplish these purposes." Article 97.

3. The Proposed Taking is Not Only Valid on Its Face But Reflects the True Motivations of the Town to Preserve East Point.

A. The 2021 ATM Vote Authorized a Taking for Conservation Purposes, and the Board Acted in Accordance with ATM Authority Adopting a Taking for Conservation Purposes.

The 2021 ATM vote authorized a taking for the purpose of "open space, recreation, conservation and/or historic preservation purposes and an easement to use certain portions for beach purposes." SoF ¶ 134. In accordance with ATM authority, the Board determined that

> [t]he public benefits resulting from conservation of the East Point Easement Areas . . . includ[ing], without limitation: the preservation of open space for the use and enjoyment of the general public, the creation and buffering of an expanded Henry Cabot Lodge, Jr. Memorial Park, . . . , the protection of the scenic and natural beauty and character of the East Point Easement Areas, the protection of public access to the sea, the protection of wildlife habitat, wildlife connectivity and biodiversity....

SoF ¶ 138.

The Board adopted the Order stating the same conservation purposes, "to preserve the East Point Easement Areas...in perpetuity in their natural, scenic, and open condition and to protect against any use...that will interfere with the conservation values of said property." Ex. 15, p. 0873.

On its "face," therefore, the proposed taking is a valid taking for conservation purposes. *See Smith*, 478 Mass. at 50, 55; *Mahajan*, 464 Mass. at 612, 615; *Elks*, 403 Mass. at 551-552 (holding there was "substantial evidence to support the [trial] judge's finding" that taking was for a valid public purpose); *Hanna v. Massachusetts Turnpike Auth.*, No. 97-4161, 2003 WL 21962527 at *1 (Mass. Super. Ct. May 27, 2003) (entering summary judgment for Turnpike Authority because "plaintiffs ha[d] no prospect of proving that the sole or dominant purpose of the taking was anything other than the stated public purpose").

B. NU Cannot Prove Bad Faith Because There Is No Evidence of Improper Motive or Unlawful Reason for the Taking.

The SJC has instructed that a reviewing court "should not easily attribute improper motives to a town, and to its citizens voting at town meeting, if there were valid reasons that would have supported the town's action." *Pheasant Ridge*, 399 Mass. at 777. Nevertheless, a taking valid on its face may be invalid if undertaken in bad faith. *Id.* at 775. In *Pheasant Ridge*, the SJC ruled that the taking of property: (a) "*solely* to benefit some private person or persons would be action taken in bad faith and grounds for declaring a taking invalid"; and (b) "*solely* for a reason that is not proper, although the stated public purpose or purposes for the taking are plainly valid ones" would constitute bad faith. *Id.* at 775 (emphasis added); *see also* Order of Karp, J. (Dkt #25).

NU makes sweeping allegations in support its bad faith defense which boil down to essentially two: that (i) the Gift Agreements and the donations of NPT evidence private motive, and (ii) the Town conservation purposes are recently advanced pretextually to stop NU's development, an improper reason for a taking.

The SJC has been clear that "[i]t is not easy to prove that particular municipal action was taken in bad faith." *Pheasant Ridge*, 399 Mass. at 776. "This is particularly true where the significant event is an affirmative vote...of the persons voting at a town meeting on a motion to

take a particular parcel of land." *Id.* at 776. "If the sole, or at least the dominant, reason for taking the property was...for the benefit of the public, then the taking [is] proper." *HTA Ltd. P'ship v. Mass. Turnpike Auth.*, 51 Mass. App. Ct. 449, 457 (2001); *see also Fitzpatrick v. Town of Cohasset*, No. 952766B, 1999 WL 1318985 at *5 (Mass. Super. Ct. Apr. 20, 1999) (citing *Pheasant Ridge*, 399 Mass. at 774, 777).

i. The Town Has a History of Accepting Gifts.

It is NU's position that the NPT gifts are evidence of private benefit, that NPT was motivated to stop the NU's CSI Project, made the donations for that reason and coopted the eminent domain process to serve its private interests. It is not in dispute that the Town entered into the Gift Agreements with NPT and that the 2021 ATM vote to authorize the taking was predicated on receipt of the gifts. It is also not in dispute that the NPT money has been received by the Town, is being and will be used for the taking by eminent domain.

For NU to prevail, however, it would first have to overcome the law of this case. As this Court has explained, what is "clear...[is] that what is relevant for a claim of bad faith taking is *the municipality's* intent motive and actions, and not those of *private persons* that may incidentally benefit from the taking." Order of Karp, J. (Dkt. #25) (emphasis added). Whatever the motive is of NPT, it is irrelevant.

Further, there is nothing wrong in NPT's gifts to the town for a public project. It is long settled that private donations to a municipality to fund a public project are lawful. This "principle admits no exception merely because the power of eminent domain is involved." *Berman v. Parker*, 348 U.S. 26, 32 (1954); *see also Machado v. Board of Pub. Works of Arlington*, 321 Mass. 101, 104-05 (1947) ("The essential thing is whether the purpose for which the taking was made was a public one. It is settled that *a taking otherwise lawful is not invalid merely because those specially benefited pay for the cost of it either in whole or in part.*" (emphasis added) (citing cases)).

The principles articulated in *Machado* date to at least 1810, when the SJC recognized that an individual may make "a *bona fide* charitable donation to a town . . . to relieve it under burdens [of a taking] necessarily imposed for the public benefit." *Commonwealth v. Inhabitants of Cambridge*, 7 Mass. 158, 166-67 (1810); *see also Parks v. City of Boston*, 25 Mass. 218, 233 (1829) ("If the public necessity and convenience required the alteration, it is immaterial at whose expense it was made. A donation or contribution from individuals to relieve the burden upon the city, has no tendency to prove that the enlargement of the street was not a public benefit."); *Inhabitants of Town of Southborough v. Boston & Worcester St. Ry. Co.*, 250 Mass. 234, 240 (1924) (in the laying out or alteration of a highway where private individuals contract with the municipality to bear the whole or a part of such expense, such contracts and payments have always been held valid and enforceable.).[4]

Moreover, Massachusetts' eminent domain statutes do not restrict the sources of funds that may be used to pay compensation. The board of officers that adopts an order of taking must award compensation at the time of adoption of the Order of Taking that "[s]uch damages shall be paid by such body politic," but does not include any language concerning the source of funds with which the body politic must pay the compensation owed. G.L. c. 79, § 6. Nor does Chapter 80A contain a provision related to the sources of funds for payment of compensation.

In addition, given the size of the town and its heavy reliance on the residential tax base, the Town has a history of accepting donations to fund various Town needs. SoF ¶ 107. The 2018, 2019 and 2020 ATMs voted to accept private financial gifts to pay for public projects and events including a lifesaving station, July 4th fireworks, school programs, scholarships, recreational

[4] Other states are in accord. *See e.g.*, 26 Am. Jur. 2d *Eminent Domain* § 51 (May 2023) ("It is settled ... private funding of a public project does not necessarily corrupt the public nature of that project (citing cases from Colorado, New Jersey, New York, and Washington)).

programs, the public library, a community garden, the public safety and public works departments, and the Memorial Day and Santa parade committees. *Id.* Acceptance of NPT gifts is no different. The question is whether the money is truly intended and used for a public purpose, not its source.

ii. Even if the Taking Confers Some Private Benefit on NPT or Other Private Citizen, the Taking's Predominant Purpose is Public.

A taking by eminent domain is not invalid because private interests benefit. Virtually every taking confers some private benefit. Even when the public purpose is unassailably valid, takings often result in a direct and substantial private benefit. *Kelo v. City of New London*, 545 U.S. 469, 485 (2005) ("Quite simply, the government's pursuit of a public purpose will often benefit individual private parties."). It is only when the private benefit outweighs the public's that the validity of a taking's purpose is questionable. Where the public purpose predominates over incidental private benefit, the constitutional public purpose requirement is satisfied. While there are certain motives or reasons for a taking that would be unlawful, it is only when "they were *the dominant reasons* for [the] taking." *Pheasant Ridge* at 777 (emphasis added).

This has been the law of the Commonwealth for more almost 200 years. *See Talbot v. Hudson*, 82 Mass. 417, 423 (1860) ("[E]very owner of meadow land bordering on these rivers will be directly benefited... by the reduction of the height of the plaintiffs' dam. The act is therefore in a certain sense for a private use, and inures directly to the individual advantage of such owners. But this is by no means a decisive test of its validity."); *Elks*, 403 Mass. at 551 (a taking "is not void merely because the disposition of that land indirectly benefits private individuals." (citations omitted); *see also Deep v. City of N. Adams*, No. 05-P-1602, 2006 WL 2853878 at *3 (Mass. App. Ct. Oct. 6, 2006) ("While the taking of the...Property might incidentally enhance the value of [a privately owned hotel], that does not make the taking invalid. A taking is not void merely because [a] disposition of that land indirectly benefits

private individuals[,] so long as the benefits to the private individuals are incidental to the main purpose of the plan, which is to achieve the public purpose.") (quotation marks and citation omitted). As a result, a party challenging a taking must "do more than merely present some evidence that purported the effect of the taking benefitted" a private party. *Deep*, 2006 WL 2853878 at *3.

Here, there is no evidence, after thousands of pages of documents were produced and eight depositions were taken, that any private citizen, some of whom as members of NPT were castigated by NU for donating in support of the preservation of East Point, is going to own any portion of East Point, or will use the land differently than any other citizen. The taking of a conservation easement in East Point inures to the general benefit of the community as a whole. Private citizens may naturally benefit as a result. But even if there were substantial and direct benefit to a private citizen, and the evidence is otherwise, the taking's purpose is predominantly conservation, a valid public purpose, and, therefore, constitutionally sound.

iii. The Conservation Purposes Are Neither Recently Contrived Nor Advanced Pretextually; Nahant has Sought to Protect East Point for 60 Years.

"In examining a municipality's proposed exercise of the power of eminent domain for inferences of bad faith, [courts] consider whether the municipality has evinced prior interest in the area or its neighborhood...." *Elks*, 403 Mass. at 552. The Town relies on the extensive Statement of Facts filed herewith and the Factual Background of this Memorandum as incontrovertible evidence of the Town's interest in protecting and preserving East Point as open space and conservation land, and the NU Property specifically since East Point was first made available for sale by GSA in 1963. SoF ¶¶ 27-28; Ex. 23, p. 1044. The 1964 ATM voted down the acquisition due to cost, a mistake that the Town would not repeat when presented with the availability of the remaining 8.3± acre parcel later to become Lodge Park. The Town acquired Lodge Park in 1974

for "protection of the area and its preservation in the natural state." Ex. 32, pp. 1113-1115. Beginning in 1989, Nahant has published Open Space plans extolling the value to the Town of conserving East Point's natural resources. In 1991, the Town zoned all of East Point as being within Nahant's Natural Resource District to preserve and maintain the area's natural conditions, wildlife, and open space. *See* Nahant Zoning Bylaw § 4.10.A ("The Natural Resource District is intended for natural resource and recreation uses" for (1) "[t]he preservation and maintenance of protected wildlife and wetlands resource areas and habitats"; (2) "[t]he protection of the Town against the costs which may be incurred when unsuitable development occurs . . . "; (3) "[t]o preserve and increase the amenities of the Town and foster enjoyment of its remaining natural resources as recreational values"; and (4) "[t]o conserve natural conditions, wildlife and open space for education, passive and active recreation and general welfare of the public."). In 2021, Nahant residents overwhelmingly approved the taking for conservation purposes. *See Grasso v. City of New Bedford*, No. Civ. A. 92-01987, 1998 WL 795052 at *16 (Mass. Super. Ct. Nov. 2, 1998) ("An improper motive should not be attributed to a city if there are valid reasons that would have supported the city's action, especially when the action at issue is undertaken by a majority vote of members of a board of public officers who cannot act separately or individually."); *Fitzpatrick*, 1999 WL 1318985 at *5 ("[I]mproper motives should not easily be attributed to a town or to its citizens voting to take land by eminent domain at a town meeting as long as a valid reason supports the town's action.").

It is indisputable that the Town has a deep and unwavering interest in protecting East Point and its ecology for the benefit of Nahant residents and the abundance of diverse flora and fauna that reside there. The taking is in furtherance of that interest. In sum, the Town is taking easements for a valid public purpose, and the Court should issue an order establishing its right to do so.

CONCLUSION

As set forth above, the Town is entitled to summary judgment and requests that the Court enter an order establishing its right to take the Conservation Easement.

[SIGNATURE PAGE APPEARS ON NEXT PAGE]

Dated: September 15, 2023

Respectfully submitted,

TOWN OF NAHANT,

By its attorneys,

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CERTIFICATE OF SERVICE

I hereby certify that, on September 15, 2023, this document was served by email and first-class mail on counsel for all parties who have appeared in this action or on the parties if no appearance has been entered.

/s/ James P. Ponsetto, Esq
James P. Ponsetto, Esq

38.2

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO. 2177C000936

TOWN OF NAHANT,

Plaintiff,

v.

12.5 ACRES OF LAND+/- SITUATED IN NAHANT, MASSACHUSETTS,

and

NORTHEASTERN UNIVERSITY,

Respondent

Assented to Motion for Leave to File in Excess of Page Limits Allowed September 18, 2023

FILED
ESSEX SUPERIOR COURT
2023 NOV 17 P 2:33

NORTHEASTERN'S RESPONSE TO TOWN OF NAHANT'S STATEMENT OF FACTS IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT

Pursuant to Superior Court Rule 9A(b)(5) and Mass. R. Civ. P. 56, Northeastern University ("Northeastern" or "NU") responds to the Town of Nahant's ("Town" or "Nahant"), statement of facts in support of its motion for summary judgment on the challenge of Northeastern to the validity of the Town's Order of Intention to Take pursuant to G. L. c. 80A.

1. The Town is on a peninsula extending out into Massachusetts Bay. Its only link to the mainland is the 1.5-mile Nahant Causeway located on the connecting isthmus. The Town has a total land area of 1.24± sq. miles. It is the smallest town by land area in Massachusetts. Exhibit ("Ex.") 1[1], 1989 Open Space Plan, p. 0005; Ex. 2, 2000 Open Space Plan, p. 0044.

Undisputed.

2. Nahant, which had a total population of 3,632 per the 2000 census, is densely

[1] Page references are to bracketed numbers that appear at the top center of each page of an exhibit.

populated and predominantly developed for single family residential use. Ex. 3, 2008 Open Space Plan, pp. 0152-0153.

Undisputed.

3. Much of Nahant's land is wetlands and rocky shoreline. Ex. 3, 2008 Open Space Plan, pp. 0156-0158.

Undisputed.

4. Of the land area, .02% or .17 acres (7,405± SF) is used for industrial purposes, and .54% or 4.16± acres is used for commercial purposes. Ex. 4, 2022 Open Space Plan, p. 0315.

Undisputed.

5. Nahant governance is by a 3-member Board of Selectmen and by an Open Town Meeting. Ex. 95, Mark Cullinan Affidavit ("Aff."), ¶ 9, p. 3182.

Undisputed.

6. East Point is a 28.44± acre peninsula at Nahant's easternmost tip that includes the Town's Lodge Park. It is bounded by Swallows Cave Road and a residential area to the west, Canoe Beach and Nahant Bay to the north, Bathing Beach and Broad Sound to the south, and Massachusetts Bay to the east. Ex. 5, NU's Response to Request to Admit (No. 7), p. 0563; Ex. 10, 2019 Certificate of the Secretary, p. 0740; Ex. 12, 2021 Easement Plan, p. 0806.

Disputed. App. p. 705, Ex. 9.

7. Ground access to East Point is by one public way, Nahant Road. Ex. 10, 2019 Certificate of the Secretary, pp. 0740-0741.

Undisputed.

8. The area is an important resource for birds. Ex. 11, 2020 Certificate of the Secretary, p. 0772; 3, Ex. 3, 2008 Open Space Plan, pp. 0171, 0174, 0186; Ex. 13, Linda

Pivacek Aff., dated December 6, 2022, ¶¶ 21, 29, pp. 0811-0812.

Disputed.

9. East Point provides a habitat for the larval settlement and juvenile development of lobster. Several diadromous (fish) species can also be found there, including alewife, blueback herring, American shad, rainbow smelt, American eel, white perch, and Atlantic tomcod. Ex. 11, 2020 Certificate of the Secretary, p. 0772.

Undisputed.

10. Of East Point's 28.44± acres, Northeastern owns a parcel consisting of 20.4± acres ("NU Property"). Ex. 11, 2020 Certificate of the Secretary, p. 0771; Ex. 16, Trussell Aff., ¶ 27, p. 0926.

Disputed as to the size of East Point. App. p. 705, Ex. 9. Undisputed as to the description of Northeastern's property.

11. The NU Property has an address of 430 Nahant Road. Ex. 11, 2020 Certificate of the Secretary, p. .0794.

Undisputed.

12. The westerly 8.024± acres of the NU Property is improved and used by Northeastern as its Marine Science Center ("MSC Parcel"). Ex. 14, Frequently Asked Questions, p. 0860.

Undisputed.

13. The NU property is more particularly described in the deed dated February 23, 1966 ("NU Deed") which is recorded with the Essex South Registry of Deeds at Book 5344, Page 142, and filed with the Essex South District of the Land Court as Document No. 118926 with Certificate #47172. Ex. 30, 1966 Deed, p. 1084.

Undisputed.

14. The NU Property is shown as Lot 2 on Plan 6813-B (sheet), dated April 12, 1976, and filed for registration with the Essex County Division of the Land Court with Certificate 46742. Ex. 35, 1976 Plan, p. 1143.

Undisputed.

15. The MSC Parcel is shown as the "Remaining Land" on a plan entitled "Easement Plan of Land, East Point in Nahant, MA, Prepared for Inhabitants of the Town of Nahant, 334 Nahant Road, Nahant MA 01908," dated April 8, 2021, by Marchionda & Associates, L.P. Ex. 12, 2021 Easement Plan; Ex. 15, 80A Complaint (plan, Exhibit A thereto), p. 0084.

Undisputed.

16. The MSC Parcel is improved with several buildings, parking lots and other related structures. Several of those improvements are repurposed former military structures left over from military use prior to 1966. Remnant military structures, including three former military bunkers, were converted into a 31,083 SF research facility. The MSC includes 15,081 SF of lab/research space (Edwards Laboratory), a 1,517 SF greenhouse, a 500 SF icehouse and 2,854 SF of temporary trailer space. The largest of the former military bunkers is the "Murphy Bunker" which contains classrooms and labs. The Murphy Bunker is sometimes called the "Murphy Battery." Ex. 11, 2020 Certificate of the Secretary p. 0771-0772.

Undisputed.

17. Since 1966, no permanent structure has been built north or east of the Murphy Bunker. Other than a solar observatory erected in 1995, and removed in 2018, no permanent structure has been built on or east of the Murphy Bunker since 1966. Ex. 5, NU's Response to Request to Admit (Nos. 22-23), p. 0568; Ex. 16, Trussell Aff., ¶ 118, p. 0941.

Undisputed.

18. As of 2021, the NU Property east of the Murphy Bunker is primarily vegetated

and contains uplands and wetlands including Bordering Vegetated Wetlands (BVW), Land Subject to Coastal Storm Flowage (LSCSF), Land Under Ocean (LUO), Coastal Beach, Coastal Bank and Coastal Wetlands. Previously disturbed areas associated with the former military bunkers, including the area above the bunkers, are now primarily wooded. Ex. 10, 2019 Certificate of the Secretary, pp. 0740-0741; Ex. 5, NU's Response to Request to Admit (No. 19), p. 0567.

Undisputed.

19. The area of East Point is geologically unique and attracts an assortment of wildlife, including trees, flowering plants, birds, insects and animals. Ex. 18, Text of the NU Audio Tour, pp. 0993-0995; Ex. 9, Lynne Spencer Tr., pp. 0713-0714 (p. 72, lines 23-24 to p. 73, lines 11-17).

Disputed.

20. In 1986, the Nahant Planning Board identified the NU Property as being owned by Northeastern, a private institution, and was "committed to open space." Ex. 19, Planning for Nahant: 1986 & Beyond, pp. 1011-1013; Ex. 2, 2000 Open Space Plan, p. 0073.

Disputed.

21. In 1999, Northeastern described the NU Property as follows: "The northeast portion of the property and the rocky coast are maintained as a wildlife sanctuary and ecological study area." Ex. 20, Northeastern MSC Website Screenshot, p. 1033.

Disputed that the reference includes the entire Northeastern Property.

22. East Point was formerly owned by the Lodge.and Elliot families. In 1941, the United States acquired the Lodge and Elliot Estates by eminent domain. Thereafter, the federal government used East Point for military purposes. The US Military referred to the site as "Nike Ajax Site B-17." Ex. 16, Trussell Aff., ¶¶ 31, 32-35; Ex. 84; GSA Analysis of Town's

Application, p. 2555.

Undisputed.

23. In the early 1960s, the military facilities were de-commissioned, and the U. S. General Services Administration ("GSA") made the site available for sale. Ex. 16, Trussell Aff., ¶¶ 42-43, p. 0928; Ex. 84, GSA Analysis of Town's Application, pp. 2555-2556.

Undisputed.

24. The Town was interested in acquiring East Point. Ex. 16, Trussell Aff., ¶ 43; Ex. 22, Nahant's Application to GSA, pp. 1038-1043.

Disputed. App. p. 2176, Ex. 74.

25. On October 18, 1963, A. Heaton Underhill, on behalf of the U. S. Department of the Interior, addressed the Town's application. Ex. 5, NU's Response to Request to Admit (No. 14), pp. 0565-0566; Ex. 23, Letter of A. Heaton Underhill, October 18, 1963, p. 1044.

Undisputed.

26. The GSA recommended sale to the Town. Ex. 84, GSA Analysis of Town's Application, p. 2559.

Disputed.

27. At the 1964 Annual Town Meeting, Town Meeting voted not to appropriate the money to buy the property. Ex. 24, Letters dated March 26, 1964 and April 2, 1964, p. 1046; Ex. 74, 2021 Report and Recommendation (Appx. 16), p. 2155.

Undisputed.

28. The Board of Selectmen summarized the Town Meeting action in an April 28, 1965 letter to the GSA. Ex. 25, Letter dated April 28, 1965, p. 1049.

Disputed.

29. On April 1965, Northeastern proposed a research facility on East Point. Ex. 26, a

Proposal for a Marine Science Research Institute, p. 1053.

Undisputed.

30. Northeastern committed that the facility would be a wildlife preserve. Ex. 26, a Proposal for a Marine Science Research Institute, pp. 1055-1056.

Disputed.

31. With respect to the former military improvements, Northeastern proposed to demolish almost all of them. Ex. 26, a Proposal for a Marine Science Research Institute, p. 1055.

Disputed.

32. Nahant's Conservation Commission ("ConCom") supported the sale to Northeastern for conservation and preservation purposes. Ex. 27, Letter dated April 30, 1965, p. 1065.

Disputed.

33. At the time of the sale to Northeastern, ConCom requested that Northeastern agree to provide a perimeter footpath around the NU Property open to the public. No such agreement was ever reached. This fact was reported to the citizens of Nahant in the 1965 Annual Town Report:

> [Nahant ConCom] was not able to secure from the [federal] Government and Northeastern University assurance that there would be an absolute right on the part of the townspeople to walk on a pathway around the cliffs. The Commission does, however, hope that some form of visiting privilege for scenic walks will be extended by Northeastern University.
>
> Ex. 28, Annual Nahant Report Dec. 31, 1965, p. 1071; Ex. 29, Letter dated September 29, 1965.

Undisputed.

34. On February 23, 1966, Northeastern acquired the NU Property. Ex. 30, Deed Without Warranty February 23, 1966; Ex. 5, NU's Response to Request to Admit (No. 1), p. 0561.

Undisputed.

35. The NU Deed reserved an easement to the remaining 8.3± acres on East Point that became Lodge Park ("Lodge Park Parcel"). Ex. 30, Deed Without Warranty February 23, 1966; Ex. 32, Application dated October 23, 1974, p. 1110.

Undisputed.

36. The Town owns the remaining 8.3± acres of East Point, now named Lodge Park. Ex. 3, 2008 Open Space Plan, p. 0167.

Undisputed.

37. The Lodge Park Parcel is contiguous to the NU Property and is shown as Lot 1 on Plan 6813-B (sheet), dated April 12, 1976, and filed for registration with the Southern Essex District of the Land Court with Certificate 46747. The Lodge Park Parcel is also shown as Parcel 1C-0-1 on the Easement Plan. Ex. 35, 1976 Plan; Ex. 12, 2021 Easement Plan.

Undisputed.

38. In or about 1974, the federal government sought applications from parties interested in acquiring the reserved Lodge Park Parcel. Both the Town and Northeastern were interested. Ex. 32, Application dated October 23, 1974, p. 1108; Ex. 33, Letter dated November 22, 1974, p. 1135.

Undisputed.

39. Northeastern's purpose in acquiring the Lodge Park Parcel was for preservation. Ex. 32, Application dated October 23, 1974, pp. 1113-1115.

Disputed.

40. The Town's application to acquire the same property was filed on or about November 22, 1974. Ex. 33, Letter dated November 22, 1974.

Undisputed.

41. On September 16, 1975, the Town acquired the Lodge Park Parcel from the GSA. Ex. 34, Lodge Park Deed, p. 1139.

Undisputed.

42. The Lodge Park Parcel was conveyed to the Town with the benefit of an easement across the NU Property Lodge Park previously reserved when the federal government sold the NU Property to Northeastern. The sole access to Lodge Park is over the NU Property by this easement. Ex. 34, Lodge Park Deed, p. 1140; Ex. 5, NU's Response to Request to Admit (No. 27), p. 0569.

Undisputed.

43. At the 1986 Annual Town Meeting, Town Meeting voters voted to create Lodge Park, the first step toward developing the area for passive recreation area. Ex. 2, 2000 Open Space Plan, p. 0094.

Undisputed that the Town voted to create Lodge Park. Northeastern disputes that there were intended further steps for passive recreation in the area beyond establishing, managing and maintaining Lodge Park.

44. At the 1988 Annual Town Meeting, Town Meeting members voted to organize an Open Space Management and Land Acquisition Committee ("Open Space Committee"), which was charged with developing an open space management plan and studying the acquisition of land for public purposes. Ex. 1, 1989 Open Space Plan, p. 0005 (Articles 63 and 64, 1988 ATM).

Undisputed.

45. Stewardship of Lodge Park was delegated to the Open Space Committee. Ex. 2, 2000 Open Space Plan, p. 0094.

Undisputed.

46. In 1989, ConCom issued a Request for Proposals ("Lodge Park RFP") for development of "A Passive Recreational Area" at Lodge Park. Ex. 36, Conservation Commission RFP for Lodge Park Passive Rec. 1989, p. 1148.

Undisputed.

47. The Lodge Park RFP sought proposals to fill in the silos, rebuild the natural terrain and plant vegetation to create a contiguous park with the adjacent NU Property east of the Murphy Bunker which had not been disturbed by Northeastern. Ex. 37, Aff. of William Mahoney, dated December 6, 2022, ¶¶ 7-9, p. 1153.

Disputed. App. pp. 1145-1149., Ex. 75.

48. The Lodge Park RFP described East Point. Ex. 36, Conservation Commission RFP for Lodge Park Passive Rec. 1989, pp. 1148-1149.

Disputed

49. At the 1990 Annual Town Meeting, Town Meeting voted to approve restoration of Lodge Park. Ex. 2, 2000 Open Space Plan (Appendix 1, Lodge Park Restoration Plan, p. 0094).

Disputed.

50. Much of the restoration was done by July 1994 when the Town rededicated the public park. The full restoration of Lodge Park was completed in 1997. Ex. 2, 2000 Open Space Plan (Appendix 1, Lodge Park Restoration Plan, p. 0095).

Disputed.

51. In January 1999, the Open Space Committee prepared and presented to the Board of Selectmen a management plan for Lodge Park the purpose of which was to preserve and maintain the park for passive recreational uses of walking, jogging, birdwatching and viewing the ocean because "the natural beauty of East Point, with its commanding ocean view, enhances

the quality of life for the residents of the Town of Nahant while providing a habitat for wildlife." Ex. 2, 2000 Open Space Plan (Appendix 1, Lodge Park Restoration Plan, p. 0094).

Undisputed.

52. At all times relevant hereto, Lodge Park is publicly owned, open space preserved by the Town. Ex. 5, NU Response to Request to Admit (No. 27), p. 0569; Ex. 2, 2000 Open Space Plan (Appendix 1, Lodge Park Restoration Plan).

Disputed.

53. Lodge Park is located in the Natural Resource Zoning District Ex. 5, NU Response to Request to Admit (Nos. 16-18), pp. 0566-0567.

Undisputed.

54. According to surveys of Nahant residents as reported in the Town's Open Space Plans, East Point and Lodge Park are among the most popular locations in town for recreation. Ex. 1, 1989 Open Space Plan, p. 0029; Ex. 2, 2000 Open Space Plan, pp. 0074, 0104; Ex. 3, 2008 Open Space Plan, p. 0182 and Appendix 2, p. 0236.

Disputed as to areas in East Point outside of Lodge Park. App., pp. 27, 32, Ex. 1; p. 101, Ex. 2; p. 237, Ex. 3.

55. Andrea Murphy, a resident of Nahant since 1960, states that she:

> remembers going to the fields to the east of Murphy Battery when she was about 10 years old...she would ride bikes up to East Point, wander and play on top of the bunker and in the meadow... [T]he wildlife preserve is regularly, nearly constantly occupied and used by the public to walk, hike, fish, pick flowers and star gaze... members of the public regularly fish[] from the cliffs on NU's property and people swim from the pebble beach to the north east of Murphy Battery.

Ex. 38, Andrea Murphy's Answers to Interrogatories (Answer No. 6), pp. 1162-1163.

Disputed.

56. Other long-time residents of Nahant have described experiences similar to Ms. Murphy's. Ex. 39, Elizabeth Pasinski's Answers to Interrogatories (Answer No. 6), pp.

1174-1175; Ex. 40, Patrick O'Reilly's Answers to Interrogatories (Answer No. 6), pp. 1186-1187; Ex. 41, Peggy Silva's Answers to Interrogatories (Answer No. 6), pp. 1197-1198; Ex. 42, Michelle Capano's Answers to Interrogatories (Answer No. 6), p. 1209-1210; Ex. 43, Donna Steinberg's Answers to Interrogatories (Answer No. 6), pp. 1221-1222; Ex. 44, Emily Potts' Answers to Interrogatories (Answer No. 6), pp. 1235-1236; Ex. 45, Diane Monteith's Answers to Interrogatories (Answer No. 6), pp. 1247-1248; Ex. 46, Dan McKackin's Answers to Interrogatories (Answer No. 6), pp. 1258-1259; Ex. 47, Jeffrey Musman's Answers to Interrogatories (Answer No. 7), pp. 1270-1271; Ex. 48, William Mahoney's Answers to Interrogatories (Answer No. 6), pp. 1281-1283; Ex. 49, Alice Cort's Answers to Interrogatories (Answer No. 3), pp. 1290-1292; Ex. 50, Carl Jenkin's Answers to Interrogatories (Answer No. 6), pp. 1306-1307.

Disputed.

57. Nahant's Open Space Committee is responsible for, among other things, developing an open space management plan and studying opportunities to and protect land for public purposes. Ex. 1, 1989 Open Space Plan, p. 0005.

Undisputed.

58. An open space plan:

> will serve as a working guide for the Town. Since the plan describes the natural resources of the Town, conservation and recreation lands already dedicated, present and future open space needs, and ways by which the natural assets of the Town and the recreational needs of the residents can be adequately met, it will serve as a point of coalescence for the committees that deal with open space/recreation issues....Secondly, the Plan is intended to fulfill the requirements of the Massachusetts Division of Conservation Services to qualify the Town to receive state Self Help funds and Federal funds for the acquisition and management of land for conservation and recreation.

Ex. 1, 1989 Open Space Plan, p. 0005.

Undisputed.

59. On December 5, 1988, at a Special Town Meeting, Town Meeting attendees

received an Open Space Survey from the Open Space Committee. Of the responses, 92% felt that more emphasis should be placed on protecting open space. Ex. 1, 1989 Open Space Plan, p. 0029.

Undisputed as to the reported responses, disputed that such survey consisted of a representative survey of the Town's residents.

60. In 1989, the Town Meeting voted to adopt the Open Space Plan ("Open Space Plan #1). Ex. 1, 2008 Open Space Plan, p. 0041.

Undisputed.

61. Open Space Plan #1, includes:

a. the NU Property listed under the category "Public Use".
b. the NU Property in its Open Space Inventory, described as "Recreation Land and Sites" as site "no. 12" and indicated "Med" for Medium Use.
c. a map showing the NU Property as no. 12 identified as the area on top of Murphy Bunker and to the east.
d. and identifies the NU Property on the map titles "Nahant Open Space" and marks NU Property as "Education and Conservation Land".

Ex. 1, 1989 Open Space Plan, pp. 0009, 0012, 0013 and 0014, respectively.

Disputed. App. p. 9, 16, Ex. 1.

62. Open Space Plan #1 identified its first goal as to "Protect open space and plant and animal habitats." The five objectives to achieve that goal were:

a. Identify open space and plant and animal habitats.
b. Inform landowners of conservation restrictions (deed restrictions that can be used to protect open space).
c. Review town-owned land that may be appropriate for conservation restrictions with Board of Selectmen.
d. Investigate special zoning measures to protect open space.
e. Recommend sites for acquisition and apply for funding.

Ex. 1, 1989 Open Space Plan, p. 0020.

Undisputed.

63. In 1999, the Open Space Committee initiated an update to Open Space Plan #1.

A survey was distributed to the households in town. Of the responses:

> The importance of open space for protection of flood plains and wetlands; the maintenance of scenic areas; recreation areas; and conservation of trees, plants and wildlife for the enhancement of environmental quality was noted by 92% or more of respondents in each of the above categories. The five areas most visited "sometimes" or "often" were Short Beach, Henry Cabot Lodge Park / East Point...[P]riorities which were seen as high or medium for improvement included walking paths in natural areas, conservation areas, playgrounds, swimming, birdwatching / nature study, jogging / bike paths, ballfields and picnic areas...In regard to future plans for Nahant - 95% or more of all respondents felt that more or some emphasis should be placed on protection of open space; protection of aesthetic quality; environmental conservation (wetlands, wildlife, natural areas, etc.); management of existing open space and recreational areas; and access to water/shore line/natural areas.
>
> Ex. 2, 2000 Open Space Plan, Appendix 2, p. 0104.
>
> **Undisputed as to the reported responses, disputed that such survey consisted of a representative survey of the Town's residents.**

64. The 2000 Open Space Plan included revisions necessary "to meet the requirements of the 1990 Open Space and Recreation Plan Requirements of the Commonwealth of Massachusetts Executive Office of Environmental Affairs and thus qualify for conservation funding and to help the Town focus on creating a vision for the future of Nahant." Ex. 2, 2000 Open Space Plan, p. 0041.

Undisputed.

65. The 2000 Open Space Plan provides that "East Point is a vital resource both as a natural habitat for wild plants and migrating birds and as a passive recreational area for all the Townspeople" and further that Northeastern "maintains much of the land as an undeveloped ecological study area." Northeastern was listed as a private institution that together with several government authorities and Mass Audubon, "were committed to open space use." Ex. 2, 2000 Open Space Plan, pp. 0062 and 0073.

Disputed that all of the quoted language appears within the cited pages.

66. The NU Property, Canoe Beach and Lodge Park were included in the Open Space

Inventory. Ex. 2, 2000 Open Space Plan, Appendix 4, p. 0120.

Undisputed.

67. Open Space Plan #2 recognizes that:

> Nahant can ill afford to miss any further opportunities to protect open space. This is why the protection of existing resources is the single most compelling issue facing planning for open space...Identifying appropriate private parcels of open space that might be available for acquisition and finding potential sources of funds for purchasing private land could also be examined.

Ex. 2, 2000 Open Space Plan, p. 0076.

Undisputed that the quoted language appears in the plan in the context of addressing residential development.

68. Open Space Plan #2 identified its first goal as to "Protect open space and plant and animal habitats." The five objectives to achieve that goal were:

A. Identify parcels of land that may qualify as open space, either as recreational areas or habitats for plant and animal conservation
B. Inform landowners of the advantages of a conservation restriction, and explore ways of achieving this objective for the landowners and the Town.
C. Review with the Board of Selectmen the inventory of Town-owned land that may be appropriate for conservation restrictions
D. Investigate special zoning measures to protect open space.
E. Recommend sites for acquisition and apply for funding.

Ex. 2, 2000 Open Space Plan, p. 0078.

Undisputed.

69. Open Space Plan #2 contains a Five-Year Action Plan which includes:

Year Two: Identify and research sites for acquisition and apply for funding.
Year Three: Research and apply for Federal and State funding for Open Space Acquisition and Management.

Ex. 2, 2000 Open Space Plan, p. 0080

Undisputed.

70. As planned, the Open Space Committee undertook another update to its 2000 Open Space Plan. Ex. 3, 2008 Open Space Plan, p. 0146.

Undisputed.

71. No new survey was conducted for Open Space Plan #3. Ex. 3, 2008 Open Space Plan, p. 0147.

Undisputed.

72. The NU Property, Canoe Beach and Lodge Park are included in the open space inventory for Open Space Plan #3. Ex. 3, 2008 Open Space Plan, Appendix 4, pp. 0260-0261.

Undisputed.

73. Open Space Plan #3 provides that "East Point is a vital resource, both as a natural habitat for wild plants and migrating birds and as a passive recreational area for all the townspeople." Ex. 3, 2008 Open Space Plan p. 0168.

Undisputed that the language appears in the plan.

74. Open Space Plan #3 states:

> [A] good portion of East Point (including some of the underground bunkers) is occupied by the Northeastern University Marine Science Center (site no. 12), which maintains much of the land as an undeveloped ecological study area.... Residents and visitors come to the site regularly for walking, jogging, birdwatching, and viewing the magnificent scenery –the 'passive recreation' for which this area is now being maintained, and for which a specific Management Plan was created by the Open Space Committee in 1998.

Ex. 3, 2008 Open Space Plan, p. 0167.

Disputed because the use of the ellipsis changes the meaning of the quoted language so it does not accurately reflect the meaning of the quoted paragraphs.

75. The goals and many of the objectives of Open Space Plan #3 remained the same as those of Open Space Plan #2, as did Goal No. 1, but Objective E was revised to include East Point:

> A. Recommend sites for acquisition and apply for funding. Special attention will be given to the important "buffer" areas around East Point, Bailey's Hill, the Lowlands, the Thicket, and the golf course.

Ex. 3, 2008 Open Space Plan, p. 0189.

Undisputed.

76. Open Space Plan #3 states:

> The Nahant Preservation Trust, a private entity incorporated in 1997 to acquire and preserve the Valley Road School building, has as one of its missions to promote the preservation of open space by holding conservation restrictions on donated or purchased properties. The Open Space Committee hosted a conservation restriction workshop for the town to help residents learn about this important conservation tool. Of special concern is protection of the "buffer" areas around East Point....

Ex. 3, 2008 Open Space Plan, p. 0186.

Disputed because the use of the ellipsis changes the meaning of the quoted language so it does not accurately reflect the meaning of the quoted language.

77. The Open Space Committee updated Open Space Plan #3 in 2022. Ex. 4, 2022 Open Space Plan, p. 0294.

Disputed to the extent the assertion implies the absence of any intervening open space plan created by the Town. App. pp. 2949-3043, Ex. 91.

78. For Open Space Plan #4, an Open Space and Recreation Survey was conducted online from June 29, 2021, through July 27, 2021. Of the responses:

> 95% considered open space for conservation and passive recreation either of high or medium importance; 90% considered open space for wildlife habitat/scenic areas to be of either high or medium importance; 97% considered preserve/protect coastal areas and wetlands to be of either high or medium importance; and 96% considered sustain the scenic quality and visual character of the town to be of either high or medium importance.

Ex. 4, 2022 Open Space Plan, pp. 0296, 0369.

Undisputed as to the reported responses, disputed that such survey consisted of a representative survey of the Town's residents.

79. Lodge Park remains among the most frequently visited parks in Nahant. Ex. 4, 2022 Open Space Plan, p. 0370.

Disputed. App. pp. 2620-2621, Ex. 86.

80. Open Space Plan #1 (1989) recommended that the Town should act to further protect East Point in several ways, one of which is by establishing a special zoning classification.

Ex. 1, 1989 Open Space Plan, p. 0019.

Disputed.

81. Open Space Plans #2 (2000) and #3 (2008) both include the Town's zoning map that shows all of East Point, including the NU Property, in the Natural Resource Zoning District. Ex. 2, 2000 Open Space Plan, Appendix 3, p, 0110; Ex. 3, 2008 Open Space Plan, Appendix 3, p. 0251.

Undisputed.

82. On April 28, 1990, at the 1990 Annual Town Meeting, the Town Meeting members voted to revise the Town's Zoning By-Law. The 1990 Zoning By-Law revision divided the Town into six classes of zoning districts, one of which was a newly created Natural Resource zoning district. Ex. 5, NU Response to Request to Admit (No. 16), p. 0566.

Undisputed.

83. At its January 7, 1991 meeting, the Planning Board supported as "tentative items for inclusion in the Natural Resource Zone, East Point and Canoe Beach." Ex. 51, Minutes of Nahant Planning Board Meeting, January 7, 1991, p. 1315; Ex. 5, NU Response to Request to Admit (No. 5), p. 0563.

Undisputed that the "tentative items" were presented as new business. Disputed that the minutes have been accurately quoted or that the inclusion was definitively supported at that meeting.

84. At the 1991 Annual Town Meeting, on April 27, 1991, by two-thirds vote, Town Meeting members voted to change the zoning district of "East Point, including Canoe Beach, the Lodge Grant, the Lodge Park and land owned or controlled by Northeastern University," from residential and to Natural Resource. The vote was 69 in favor, 3 opposed. Ex. 52, Report of Annual Town Meeting, April 27, 1991, pp. 1321-1322; Ex. 5, NU Response to Request to Admit

(Nos. 16-18), pp. 0566-0567.

Undisputed.

85. The NU Property has been in the Natural Resource Zoning District since 1991. Ex. 5, NU Response to Request to Admit (Nos. 17-18), p. 0567.

Undisputed.

86. On August 27, 2018, at a Special Town Meeting, Town Meeting voters adopted the Nahant Wetlands Bylaw ("Nahant Wetlands Bylaw"), and the Nahant Wetlands Bylaw regulations. Ex. 94, 2018 Special Town Meeting Warrant Articles, pp. 3178-31179.

Undisputed.

87. The purpose of the Nahant Wetlands bylaw is to protect the wetlands, water resources, and adjoining land areas in Nahant. *Id.*

Disputed.

88. In February 2018, Northeastern presented its plans to develop a Coastal Sustainability Institute ("CSI") on the NU Property ("CSI Project") at a public meeting of the Board which was attended by Nahant citizens, including certain members of Nahant Preservation Trust. Ex. 53, Board of Selectmen's Minutes, February 15, 2018, pp. 1326[2]; Ex. 16, Trussell Aff., ¶ 6, p. 0921.

Undisputed.

89. The proposed CSI Project included a scheme involving construction of a 55,000 SF structure to be located on top of the Murphy Bunker and "a reconfigured entrance from Nahant Road, reconstruction and minor realignment of driveways, and new parking areas that will provide 125 spaces... a geothermal heating and cooling system will be located in the area to

[2] Video of the same proceeding may be found at https://www.youtube.com/watch?v=iAN-OezkgqM&list=PLYhif7MJu45F_Wbpzqy5om32Zg0SYfM8W&index=159.

the east of the [Murphy Bunker]. The geothermal wellfield will occupy an area of approximately 1.06 acres and consist of approximately 80 wells in total that are spaced approximately 25 feet (ft) apart." Ex. 11, 2020 Certificate of the Secretary, p. 0770.

Undisputed, except that the structure is to be located within the bunker and on the land above the bunker, not only on the land above it.

90. Among the environmental impacts associated with the proposed CSI Project include land subject to coastal storm flow, creation of impervious surfaces, alteration of historic resources, generation of increased vehicle trips, increase in water demand and increase in wastewater generation. Ex. 11, 2020 Certificate of the Secretary, pp. 0773, 0777.

Undisputed that the potential impacts were identified in the filing.

91. In the summer of 2018, Northeastern met with a number of Nahant residents and as a result of those discussions, made material modifications to the CSI Project. Ex. 16, Trussell Aff., ¶¶ 20-21, 0924.

Undisputed.

92. In December 2018, Northeastern presented the revised CSI Project at a public meeting "attended by approximately 200 citizens." Ex. 16, Trussell Aff., ¶ 22, p. 0924; Ex. 55, Board of Selectmen's Minutes, December 11, 2018, pp. 1465-1470.[3]

Undisputed.

93. In or about June 2019, Northeastern commenced pre-construction, exploratory soils and geotechnical investigations and testing of the NU Property, clearing about half an acre in an area east of the Murphy Bunker, triggering efforts to enjoin NU. Ex. 56, Mackay Aff. (2020), ¶¶ 5-6, p. 1473.

[3] Video of the same proceeding may be found at https://www.youtube.com/watch?v=2Ml4-lSwLFs&list=PLYhif7MJu45F_Wbpzqy5om32Zg0SYfM8W&index=141.

Disputed that Northeastern's lawful activities "triggered" efforts to enjoin the activities, which efforts were found by multiple courts not to be meritorious.

94. Northeastern cleared 1,345 SF of wetlands, cut down a large pine tree and damaged two additional large pine trees in the maritime shrubland habitat east of the [Murphy] bunker. Ex. 57, M. Lofstedt Aff., ¶¶ 5-9, pp. 1478-1479.

Disputed.

95. In January 2018, Northeastern filed an Environmental Notification Form ("ENF #1") under the Massachusetts Environmental Policy Act ("MEPA"). The project was described as a new seawater intake system project on the NU Property only. Ex. 10, 2019 Certificate of the Secretary, p. 0741.

Undisputed.

96. Northeastern withdrew ENF #1 at the request of the MEPA analysts in response to comments of Nahant residents and resource agencies that ENF #1 was too limited because it was solely about the new seawater intake system; the MEPA required NU's review include the CSI Project at the same time. Ex. 10, 2019 Certificate of the Secretary, p. 0741.

Undisputed that Northeastern withdrew the application and disputes the remainder of the assertion.

97. On May 31, 2019, Northeastern filed a new ENF ("ENF #2") which included both the CSI Project and the seawater system. Ex. 11, 2020 Certificate of the Secretary, p. 0772-0773.

Undisputed.

98. On August 2, 2019, the Secretary required Northeastern to submit a Draft Environmental Impact Report (DEIR) that:

> should consider placing a conservation restriction on a portion(s) of the site designated as open space, including areas containing wetlands, to ensure their permanent protection.

The DEIR should identify any impacts of the project design or construction on the access easement to Lodge Park.

Ex. [10], 2019 Certificate of the Secretary, p. 0749.

Undisputed.

More than 500 Comments Received on ENF #2

99. On ENF #2, more than 500 comments were received on the CSI Project. "The majority of commenters express significant concern with siting the facility on East Point, including impacts to open space, wildlife and municipal infrastructure." Ex. 10, 2019 Certificate of the Secretary, p. 0743.

Undisputed.

100. The individual names of the commenters are listed in the Secretary's Certificate. Ex. 10, 2019 Certificate of the Secretary, pp. 0756-0767.

Undisputed.

101. On November 15, 2019, Northeastern filed its Draft Environmental Impact Report ("DEIR"). Ex. 59, DEIR (excerpt).

Undisputed.

102. On March 16, 2020, Northeastern filed the Final Environmental Impact Report ("FEIR"). Ex. 60, FEIR (excerpt).

Undisputed.

103. Approximately 450 comments were received concerning the FEIR, the Secretary "acknowledge[ing] the numerous comments received from the Town of Nahant, residents, advocacy organizations and State Agencies throughout the course of this review." Ex. 11, 2020 Certificate of the Secretary, p. 0775.

Undisputed.

104. The individual names of the commenters are listed in the Secretary's Certificate.

Ex. 11, 2020 Certificate of the Secretary, pp. 0789-0790.

Undisputed.

105. Northeastern declined to commit to placing a conservation restriction on the open space areas in both its DEIR and FEIR. Ex. 59, p. 1692, Ex 60, p. 1696; Ex. 11, 2020 Certificate of the Secretary, p. 0778.

Disputed. Ex. 90.

106. In or about March and April 2018, a citizens' petition regarding preservation of East Point was circulated in Nahant. The petition was signed by signed by 1,683 residents of Nahant. The petition was sent to Northeastern' President Joseph Aoun and Board of Trustees by what was referred to as an Open Letter ("Open Letter"). In part, the Open Letter provides "Our goal is to preserve East Point as the conservation area it is today." Ex. 54, Citizen's Petition/Open Letter, pp. 1329-1334.

Disputed, App. pp. 2693-2694., Ex. 87.

107. At the 2018, 2019 and 2020 Annual Town Meetings, the Town Meeting Members voted to accept gifts of grants or money for numerous public programs and committees. Ex. 65, 2018 Annual Town Meeting Transcript, Article 35, p. 1744; Ex. 66, 2019 Annual Town Meeting Transcript, Article 31, p. 1819; Ex. 69, 2020 Annual Town Warrant, Article 16, p. 1927.

Undisputed.

108. Nahant Preservation Trust ("NPT") is a Massachusetts nonprofit, volunteer corporation dedicated to preservation. Ex. 7, Musman Transcript, p. 0590 (p. 17, lines 4-23).

Undisputed.

109. In 2018, NPT made a gift in the amount of $67,500 to the Town pursuant to G. L. c. 44, § 53A. The Board of Selectmen voted 3 – 0 to accept the gift on May 17, 2018, as noted on the last page of the agreement. Ex. 61, 2018 Gift Agreement, p. 1698.

Undisputed.

110. In 2020, NPT made a gift in the amount of $50,000 to the Town pursuant to G. L. c. 44, § 53A. The Board of Selectmen voted 3 – 0 to accept the gift on April 2, 2020, as noted on the last page of the agreement. Ex. 62, 2019 Gift Agreement, p. 1702.

Undisputed.

111. In 2021, NPT made a gift in the amount of $3,000,000 to the Town pursuant to G. L. c. 44, § 53A. The Board of Selectmen voted 2 – 0 to accept the gift on May 11, 2021, as noted on the last page of the agreement. Ex. 63, 2021 Gift Agreement, p. 1708 – 1713.

Undisputed.

112. At the 2021 Annual Town Meeting, the Town Meeting members voted to accept the 2021 NPT $3,000,000 gift, which was earmarked for the taking of the NU Property. Ex. 76, 2021 Annual Town Meeting Warrant, pp. 2239-2240.

Undisputed.

113. The Board of Selectmen of Nahant are elected by the voters of the Town. The Selectmen serve a term of three years. Ex. 95, Mark Cullinan Aff., ¶ 9.

Undisputed.

114. From January 2018 until April 2019, the Board of Selectmen were Chesley R. Taylor, Jr., Richard J. Lombard, and Francis J. "Enzo" Barile. Taylor's term expired in April 2019, and Joshua A. Antrim was elected on April 27, 2019 to a 3-year term. Barile resigned effective October 18, 2019. A Special Town Election was held on January 29, 2020, resulting in Mark Cullinan's election to complete Barile's term. Cullinan was reelected in April 2021. In each case, he was elected on a platform favoring preservation of East Point. Eugene Canty was elected to a full 3-year term on June 20, 2020 and reelected three years later. Ex. 95, Mark Cullinan Aff., ¶¶ 9-15, p. 3182.

Undisputed.

115. By letter dated April 6, 2018, the Board of Selectmen, consisting of Taylor, Lombard and Barile, joined the Open Letter and wrote to Northeastern's President and Board of Trustees stating the Board's position:

> The proposed 60,000 sq. ft. building, with its roadways and lighting is not a fit for our scenic residential community. The construction has the potential to eliminate bird and wildlife habitats. A new entrance into the Marine Science Center will alter traffic flow. A proposed parking lot will increase traffic from cars, delivery truck, and shuttles, thus putting more strain on our infrastructure.

Ex. 54, Citizen's Petition/Open Letter, pp. 1331-1332; ¶ 106 above.

Undisputed.

116. In March 2020, in advance of the then scheduled May 2020 Annual Town Meeting (cancelled due to COVID), the Board of Selectmen, issued to Nahant citizens its plan to Preserve East Point as a Wildlife Preserve ("First Statement"):

> Today we announce that the Nahant Board of Selectmen is taking our first concrete step to permanently save the open space, woodlands, beaches and meadows making up the Wildlife Preserve at East Point...We are at the tipping point with the projected environmental impact to East Point...Our only goal is to save the Wildlife Preserve and rights to Canoe Beach. Northeastern University's current (and 50+ year history of) use and activities are not to be disturbed.

Ex. 70, First Statement of the Selectmen, p. 1929.

Disputed that the paragraph accurately quotes the First Statement.

117. On August 21, 2020, the Board of Selectmen issued to Nahant citizens a document titled "Preserving East Point as a Wildlife Preserve, Second Statement of the Nahant Board of Selectmen." ("Second Statement"). Ex. 71, Second Statement of the Selectmen, p. 1936.

Undisputed.

118. The Second Statement recommends that East Point be preserved. Ex. 71, Second Statement of the Selectmen, pp. 1936-1937.

Undisputed that the Second Statement recommends the taking of the Subject Property. Disputed that such taking serves to "preserve" East Point.

119. The Second Statement compares the cost of executing eminent domain to the cost of allowing Northeastern to develop East Point. Ex. 71, Second Statement of the Selectmen, pp. 1936-1937 (and attachment, pp. 7-14).

Undisputed.

120. On September 29, 2020, Mark Cullinan, Chairman of the Board of Selectmen, published a letter to the Town announcing rejection of an offer by Northeastern in compromise, which stated in part "Northeastern's conditions do not adequately address the issue central to any proposed expansion, which is the preservation of the wildlife area on top of, and to the east of, the Murphy Battery." Ex. 72, Selectmen's Press Statement, 9.29.20, p. 1961.

Undisputed.

121. In 2004, the Town adopted the Community Preservation Act, G. L. c. 44B, ("CPA"), establishing a Community Preservation Committee ("CPC"). Nahant implemented a 3% property tax surcharge rate. Ex. 71, Second Statement of the Selectmen, p. 1947.

Undisputed.

122. Since 2008, the CPC and the Board of Selectmen have approved approximately 34 projects related to Open Space and Recreation. Ex. 4, 2022 Open Space Plan, p. 0380.

Undisputed.

123. In or about March, 2020, the Board of Selectmen filed a Grant Application with the CPC for a $1.5 million grant for The Wildlife Preserve at East Point project, for funding in Fiscal Year 2012 (July 1, 2020 – June 30, 2021). The purpose of the application was for Open Space, Historic Preservation and Recreation. Ex. 67, CPA Grant Application 2020, pp. 1878-1900.

Disputed.

124. The CPC Grant Application describes the need to preserve East Point, specifically "an area of approximately 10-12 acres and together with easement rights of access to and use of Canoe Beach (collectively herein referred to as "The Wildlife Preserve"). Ex. 67, CPA Grant Application 2020, p. 1878.

Disputed.

125. Lodge Park and The Wildlife Preserve together make up a contiguous parkland and preserve that has been used for over 50 years by the public for passive recreation and wildlife observation. Ex. 67, CPA Grant Application 2020, p. 1878.

Disputed.

126. On March 23, 2020, the CPC voted to recommend to Town Meeting that it authorize the Town to borrow $ 1,500,000 which will be paid back with CPC Funds. Ex. 68, CPC Minutes, 3.23.20, p. 1912.

Undisputed.

127. The CPC recommended to eligible voters that they vote in favor of financing the proposed taking in part with CPA funds. Ex. 74, 2021 Report and Recommendation, pp. 1994-1996.

Undisputed.

128. The Advisory and Finance Committee ("FinCom") is the fiscal and managerial watchdog of the Town. Ex. 8, Robert Vanderslice Transcript, p. 0659 (p. 8, lines 6-22).

Undisputed.

129. In advance of the Town Meeting, FinCom makes recommendations whether the Town Meeting members should vote in favor of an article appearing on the Town Warrant. Ex. 8, Robert Vanderslice Transcript, p. 0659 (p. 8, lines 6-22).

Undisputed.

130. At the time of the 2021 Annual Town Meeting, on May 15, 2021, FinCom was made up of 8 members, with John Fulghum and Robert Vanderslice, the Co-Chairs. Ex. 75, FinCom Minutes, 5.15.21, p. 2215.

Undisputed.

131. In advance of the 2021 Annual Town Meeting, FinCom published its Report and Recommendation. Ex. 74, 2021 Report and Recommendation, p. 1966.

Undisputed.

132. On May 15, 2021, prior to the 2021 Annual Town Meeting being called to order, the FinCom voted 6 -2 to recommend that the Town Meeting members approve Article 22, which is described in paragraph 134 below. Ex. 75, FinCom Minutes, 5.15.21, p. 2215.

Undisputed.

133. The 2021 Annual Town Meeting ("2021 ATM") was convened on May 15, 2021. Ex. 78, 2021 Annual Town Meeting Transcript, p. 2264.

Undisputed.

134. 2021 ATM Article 22 provides as follows relating to the NU Property:

> **ARTICLE 22. (Authorize Acquisition)** To see if the Town will vote to authorize the Board of Selectmen to acquire, by gift, negotiated purchase, eminent domain taking (pursuant to c. 80A exclusively), or otherwise, the fee simple interest or any lesser interest in all or a portion of the land located at 430 Nahant Road, Nahant, *[shown on Assessors Map/Lot as 1B-0-1,]* and described in a deed recorded with the Essex South District Registry of Deeds in Book 5344, Page 142, and in Certificate #47172, for open space, recreation, conservation and/or historic preservation purposes and an easement to use certain portions for beach purposes as shown on a plan on file with the Town Clerk, subject to the receipt by the Town of grants or gifts in the amount of at least $3,000,000, or such larger amount as shall be required, together with the amount appropriated as described below, to pay the purchase price or *pro tanto* amount, as the case may be, and all costs incidental or related thereto, and to take any other action relative thereto.

Ex. 76, 2021 Town Meeting Warrant, p. 2240-2241.

Undisputed.

135. 2021 ATM Sub-Article 21V is the CPC's Grant Recommendation relating to the East Point:

> Sub-Article 21]V. To appropriate through borrowing the sum of $1,500,000 to pay a portion of the costs to acquire the fee simple or a lesser interest in all or a portion of the land located at 430 Nahant Road, Nahant, [shown on Assessors Map/Lot as 1B-0-1,] and described in a deed recorded with the Essex South District Registry of Deeds in Book 5344, Page 142, and in Certificate #47172, for open space, recreation, conservation and/or historic preservation purposes and an easement to use certain portions for beach purposes as shown on a plan on file with the Town Clerk, including the payment of all costs incidental or related thereto, [the expenditure of which is] subject to:
>
> (i) a vote of the Town to acquire the above-described property, and
>
> (ii) the receipt by the Town of grants or gifts in the amount of at least $3,000,000 or such larger amount as shall be required, together with the amount appropriated at this Town Meeting, to pay the purchase price or pro tanto amount, as the case may be, of acquiring such interest in the above-described property,
>
> and, further, the Treasurer, with the approval of the Board of Selectmen, is authorized to borrow the sum of $1,500,000 under G.L. c. 44B, G.L. c. 44, §7, 8, or any other enabling authority, and to issue bonds or notes of the Town therefor, and any premium received by the Town upon the sale of any bonds or notes approved by this vote, less any such premium applied to the payment of the costs of issuance of such bonds or notes, may be applied to the payment of costs approved by this vote in accordance with G.L. c. 44, §20, as amended, thereby reducing the amount authorized to be borrowed to pay such costs by a like amount, and to take any other action relative thereto.
>
> Ex. 76, 2021 Town Meeting Warrant, p. 2240-2241.

Undisputed.

136. At the 2021 ATM, Town Meeting members voted to approve Article 22 by a two-thirds vote, 647 to 271, authorizing the Town's Board of Selectmen to acquire by gift, negotiated purchase, or by eminent domain under G. L. c. 80A, the fee simple or any lesser interest in all or a portion of the Undeveloped Parcel and Canoe Beach. Ex. 76, 2021 Town Meeting Warrant, pp. 2241-2242; Ex. 78, 2021 Annual Town Meeting Transcript, pp. 2399-2457 (p. 135, lines 20-24 to p. 193, lines 1-9).

Undisputed as to the results of the vote, disputed that the vote "authorizes" a taking.

137. At the 2021 ATM, Town Meeting members voted to approve Sub-Article 21 V,

by a vote of 655 to 14, thereby, authorizing the appropriation of $1,500,000 from CPC funds. Ex. 76, 2021 Town Meeting Warrant, p. 2240; Ex. 78, 2021 Annual Town Meeting Transcript, pp. 2457-2458.

Undisputed.

138. On September 8, 2021, at a lawfully noticed and duly convened meeting of the Board of Selectmen, in accordance with the authority of Town Meeting, the Board voted to adopt the Order, declaring its intent to take by eminent domain the Conservation Easement and the Access Easement and impose the Conservation Restrictions. Ex. 79, Board Agenda Sept. 8 Meeting, p. 2514; Ex. 15, pp. 0873-0881.

Undisputed that the vote occurred. Disputed that said vote and Order were made in good faith for a lawful purpose.

139. The Town had made no other takings by eminent domain in more than fifty years. Ex. 95, Cullinan Aff., ¶ 17, p. 3183.

Undisputed.

140. At that meeting, the Board voted to estimate the award of damages in the amount of Two Million Two Hundred Ten Thousand Dollars ($2,210,000) Ex. 80, Board Minutes 9.8.21, p. 2516; Ex. 15, p. 0881.

Undisputed.

141. Notice of adoption of the Order was sent forthwith to Northeastern by registered mail on September 9, 2021, with a copy of the Order and Plan. Ex. 81, 2021 Notice of Adoption, p. 2524.

Undisputed.

142. Notices of adoption of the Order were posted in conspicuous places on the Undeveloped Parcel and Canoe Beach on September 10, 2021. Ex. 82, Image of 80A Posting, p.

2539.

Undisputed.

143. On September 10, 2021, less than ten (10) days after adoption of the Order, the Town caused the Order, together with the Plan, to be filed for registration at the Essex Registry District of Land Court, document #629107. Ex. 83, 2021 Recorded Order of Intention to Take with Plan, p. 2541.

Undisputed.

Respectfully Submitted,

TOWN OF NAHANT,

By its attorneys,

GREENBERG TRAURIG LLP



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ponsettoj@gtlaw.com

Dated: September 15, 2023

CERTIFICATE OF SERVICE

I hereby certify that, on September 15, 2023, this document was served by email and first-class mail on counsel for all parties who have appeared in this action or on the parties if no appearance has been entered.

/s/ James P. Ponsetto
James P. Ponsetto

AS TO RESPONSES

Respectfully Submitted,

NORTHEASTERN UNIVERSITY,

By its Attorneys,

THE McLAUGHLIN BROTHERS, P.C.,

By: */s/ Joel E. Faller*
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Dated: October 13, 2023

CERTIFICATE OF SERVICE

I, Joel E. Faller, III, hereby certify that I have on this 13th day of October, 2023, served the foregoing by emailing a copy thereof to James D. Masterman and James Ponsetto at mastermanj@gtlaw.com and ponsettoj@gtlaw.com.

By: */s/Joel E. Faller*
Joel E. Faller

ACTIVE 691627018v1

38.3

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO. 2177CV00936

TOWN OF NAHANT,

Plaintiff

v.

12.5 ACRES OF LAND +/- SITUATED IN NAHANT, MASSACHUSETTS,

And

NORTHEASTERN UNIVERSITY,

Respondent

FILED
ESSEX SUPERIOR COURT
2023 NOV 17 P 2:33

NORTHEASTERN UNIVERSITY'S OPPOSITION TO TOWN OF NAHANT'S MOTION FOR SUMMARY JUDGMENT REGARDING NORTHEASTERN UNIVERSITY'S CHALLENGE TO THE VALIDITY OF THE TOWN'S ORDER OF INTENTION TO TAKE BY EMINENT DOMAIN PURSUANT TO G.L. c. 80A

Now comes the Respondent, Northeastern University ("Northeastern"), and hereby opposes the Town of Nahant's Motion for Summary Judgment Regarding Northeastern University's Challenge to the Validity of the Town's Order of Intention to take by Eminent Domain Pursuant to G.L. C. 80A (the "Town Motion"). Northeastern has contemporaneously filed a Motion seeking summary judgment determining that the Town of Nahant (the "Town") is not authorized to make the requested eminent domain taking because it is being pursued in bad faith (the "Northeastern Motion"). The Court should allow the Northeastern Motion and deny the Town Motion because there is no material dispute of fact that the Town is attempting to use its eminent domain powers in a bad faith effort to stop Northeastern from pursuing a development project on its property (the "Northeastern Property"). Further, even without considering Northeastern's Motion, there are numerous factual issues that would preclude a determination that the Town is entitled to judgment as

a matter of law authorizing it to take a portion of the Northeastern Property (the "Subject Property") by eminent domain. The Town Motion should be denied.

ADDITIONAL FACTS DEMONSTRATING SUMMARY JUDGMENT IS NOT WARRANTED

Pursuant to Massachusetts Superior Court Rule 9A(b)(5)(iii)(B), a party opposing a motion for summary judgment may separately submit a statement of additional facts warranting denying summary judgment in a separate statement, where the facts are used in support of a cross-motion for summary judgment. Northeastern has filed such a cross-motion and incorporates herein by reference Respondent's Statement of Undisputed Facts Pursuant to Superior Court Rule 9A(b)(5) ("Respondent's Facts") served contemporaneously with Respondent's Motion for Summary Judgment on Plaintiff's Claims, as well as the additional facts set out below.

ARGUMENT

I. The Town Has Admitted that it Is Attempting to Use Eminent Domain to Stop Northeastern from Pursuing a Specific Development Project

It is settled law that "a municipal land taking, proper on its face, may be invalid because it was undertaken in bad faith." Pheasant Ridge Associates Ltd. Partnership v. Town of Burlington, 399 Mass. 771, 775 (1987). "Bad faith in the use of the power of eminent domain is not limited to action taken solely to benefit private interests. It includes the use of the power of eminent domain solely for a reason that is not proper, although the stated public purpose or purposes for the taking are plainly valid ones." Id. at 776. The Pheasant Ridge Court expressly recognized that taking land solely to block a proposed development project would be clearly improper. Id. at 777.

A crucial issue for the Court's determination is therefore whether the true purpose of the proposed taking is to stop Northeastern's proposed development. The Town agrees that this is an

issue in the case and concedes that a taking to stop the development would be improper. *See* Memorandum, p. 14 (Identifying Northeastern's second allegation in support of the bad faith taking as "the Town conservation purposes are recently advanced pretextually to stop NU's development, **an improper reason for a taking**" (emphasis added)). Notwithstanding the concession, the Town makes only a faint-hearted effort to argue that the taking is not being pursued to stop Northeastern's development, and in doing so ignores evidence to the contrary that is both abundant and uncontested, much of which comes from direct admissions from the Town itself.

Contemporaneously with service of the Town Motion, Northeastern has served the Northeastern Motion, which establishes that the Town is using the attempted eminent domain taking as a tool to stop Northeastern's development. In the Northeastern Motion, Northeastern does not rely on mere inferences for the conclusion that the Town is attempting to take the Subject Property to stop Northeastern's development but sets out sworn testimony of Town officials designated by the Town to speak for it in this litigation and of other current and former Town officers. Northeastern incorporates herein the arguments in the Northeastern Motion by reference. The Northeastern Motion should be allowed. In any event, when all available evidence is considered, the Town clearly cannot meet its burden to show the absence of a material factual dispute as to whether the Town's dominant motivation is to stop the Taking. Overwhelming evidence supports the argument that this is precisely the reason the taking is being pursued.

A. The Town Admits that Eminent Domain Is Being Used as a "Tool" to Stop Northeastern

The Town has conceded through its Rule 30(b)(6) designees that it is using eminent domain as a "tool" to prevent or alter Northeastern's development plans. App., p. 707, Ex. 9

(Town Deposition-Spencer, p. 48)[1]; App., p. 2856, Ex. 89 (Town Deposition-Cullinan, pp. 89-90); Respondent's Facts, ¶¶11, 24. This testimony was corroborated by one of the Town's Selectmen who voted to issue the Order to take the Northeastern Property. App., pp. 2779, Ex. 88 (Antrim Deposition, pp. 153-154; 168) Respondent's Facts, ¶¶25-26, 28. Selectman Antrim expressly informed the public that the Town could "stop" the project "with eminent domain." App., p. 3161, Ex. 92 (Town Admission, Response 15); Respondent's Facts, ¶26. The Town asserts that the authorization of the eminent domain taking was the "logical consequence" of the Town being unable to stop Northeastern from pursuing its proposed project through negotiations. App., p. 721, Ex. 9 (Town Deposition-Spencer, pp. 103-104); Respondent's Facts, ¶29.

The Town had not engaged in any discussion or activity towards an eminent domain taking of the Northeastern Property until Northeastern announced its proposed development, which occurred at a Town Board of Selectmen Meeting in February 2018. App., p. 2597, Ex. 86 (Barile Deposition, p. 123); Respondent's Facts, ¶13. Northeastern's announcement was immediately unpopular with some residents and all members of the Board of Selectmen, who immediately vocally and vehemently opposed the project. App., pp. 2852, Ex. 86 (Barile Deposition, pp. 67-68); Respondent's Facts, ¶¶5-10. Immediately after Northeastern's presentation to the Board of Selectmen, the Town began considering eminent domain in response. App., p. 2856, Ex. 89 (Cullinan Deposition, pp. 89-90); Respondent's Facts, ¶11. Francis "Enzo" Barile, the Board of Selectmen Chair at the time, testified unequivocally that from the onset of the Town's consideration of eminent domain, the sole purpose for such

[1] The factual citations herein are to the Joint Appendix of Exhibits filed by the parties with respect to both parties' motions for summary judgment. Northeastern will use the citation form: "App., p._____, Ex. __" to reference "Appendix, page number _, within Appendix Exhibit Number ___ . Where believed to be helpful, Northeastern will include a parenthetical with a brief description of the document being cited. The terms used in the descriptive parentheticals refer to the terms defined in the Respondent's Facts.

consideration was to "stop Northeastern." App., p. 2572, Ex. 86 (Barile Deposition, p. 27); Respondent's Facts, ¶12.

As the Board of Selectmen sought authority to take the Northeastern Property by eminent domain, the Board was clear with the public that its intention was to use such authorization to stop Northeastern's project. The Board sent a letter to all the Town's citizens with a document called "the Second Statement of the Nahant Board of Selectmen on Preserving East Point as a Wildlife Preserve" (the "Second Statement"). App., p 2860, Ex. 89 (Town Deposition-Cullinan, p. 107); App., pp. 1936-1959, Ex. 71; 3070-3093, Ex. 91, (Town Deposition, Exhibit 13); Respondent's Facts, ¶31. The Second Statement made the Board's intent clear, stating that the Northeastern Property "will soon be developed unless you use your vote to prevent it." App., p. 1937, Ex. 91 (Second Statement); Respondent's Facts, ¶33. Individual communications from Selectman Antrim stressed to the Town's citizens that their vote was a "binary choice" for development or not, and that they should be deciding whether they want to have a building or not. App., p. 2779, Ex. 88 (Antrim Deposition, p. 154); App., p. 3161, Ex. 92 (Town Admission, ¶16); Respondent's Facts, ¶35. Antrim also communicated that the eminent domain vote would give the Board of Selectmen "leverage" to deal with Northeastern. Id.; Respondent's Facts, ¶37.

The Town's overall conduct is fully consistent with its admitted intention to stop Northeastern. As one Selectmen stated immediately after hearing Northeastern's proposal, the Town's attitude was "we need to take every step legally" to stop the project. App., p. 3155, Ex. 92 (Faller Affidavit, ¶8); Respondent's Facts, ¶6. Consequently, the Town engaged in a scorched earth legal campaign to stop the project. It joined a losing lawsuit to declare that the Subject Property had been dedicated to public use and has appealed to the Appeals Court (and unsuccessfully to the Supreme Judicial Court through a petition for Direct Appellate Review,

which was denied) this Court's decision granting Northeastern summary judgment finding that no dedication was ever made. The Town has denied Northeastern virtually all land use permits that it has requested on the Subject Property, requiring Northeastern to appeal each decision to this Court. Currently, Northeastern and the Town are adverse parties in eight (8) separate legal actions involving the use of the Subject Property, including six (6) currently before this Court and another two (2) that have been appealed from this Court. Respondent's Facts, ¶75.

The Town is bound by the sworn testimony of its designated deponents that eminent domain is being used to stop Northeastern from constructing its project. At the very least, such testimony, as well as the testimony of other Town officials, establish the existence of material facts disputing the Town's argument that its purpose was general conservation, not to stop Northeastern's project and thereby defeat the Town Motion.

B. The Town Lacks Evidence that Would Show a Proper Purpose for the Taking

While overwhelming evidence supports Northeastern's position that the dominant purpose of the taking was to stop Northeastern's project, the evidence set forward by the Town allegedly supporting a lack of such a motive is distinctly underwhelming. In its Memorandum (pp. 18-19), the Town devotes less than a page and a half of argument to this key issue and identifies only the following as factual support for this specific position: (1) The Town held a vote at its annual town meeting in 1964 regarding the potential acquisition of the Northeastern Property but voted it down; (2) the Town acquired the abutting property in 1974, which ultimately became Lodge Park; (3) Nahant's Open Space plans "extolled" the value of conserving East Point's natural resources; (4) the Northeastern Property and the remainder of East Point was zoned within the Town's Natural Resource District in 1991; and (5) the Town voted to authorize acquiring the Subject Property in 2021. None of these facts support the

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COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss. SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO. 2177C000936

TOWN OF NAHANT,

Plaintiff,

v.

12.5 ACRES OF LAND+/- SITUATED IN NAHANT, MASSACHUSETTS,

and

NORTHEASTERN UNIVERSITY,

Respondent

FILED
ESSEX SUPERIOR COURT
2023 NOV 17 P 2:33

NAHANT'S REPLY TO NORTHEASTERN'S OPPOSITION TO NAHANT'S MOTION FOR SUMMARY JUDGMENT

Now comes the Town of Nahant in reply and states as follows:

1. The Town is Not Judicially Estopped. NU's claim that the Town is judicially estopped from pursuing its Chapter 80A rights (NU Opp. Br., p. 19) fails on two grounds. First, NU's attorney, George McLaughlin, represented to the Court at the December 1, 2021 case management conference that NU would not raise judicial estoppel as a defense. Dkt. 12/01/21 ("[W]e can all agree upon an order so it's clear going forward in the imminent (sic) domain case, I'm not going to be claiming judicial estoppel or any of those things"). Ex A, p. 29 attached. That representation binds NU. *Patriot Cinemas, Inc. v. General Cinemas Corp.*, 834 F.3d 208, 212-13 (1st Cir. 1987) ("the doctrine of judicial estoppel bars [Plaintiff] from changing the position it previously took in the superior court that it does not intend to proceed on the state antitrust claim "at all."").

testimony, the evidence that NU chooses to rely upon to prove private benefit is an off-hand comment by a former, disgruntled selectman named Francis "Enzo" Barile that he heard a rumor. Ex. 86, 2616-2617 ("I'm going to be honest. That's what I heard. Whether it's true or not, I don't know. It could have been Santa Claus for all I know"). Barile's testimony regarding unsubstantiated events involving donors that he heard about after he resigned his position as a selectman in 2019 had no bearing on the 2021 ATM vote to authorize the taking. Regardless, the motivations of the donors to NPT are not imputed to the Town. Two Town selectmen who were on the Board in 2020 and 2021 before the 2021 ATM have testified that they are unaware of the identity of donors to NPT. Ex. 88, 2767, p. 105; Ex. 89, 2815, p. 47. Regardless, even if there were some private benefit, if the public purposes of predominates over private, then the taking is valid. *Elks Lodge No. 65 v. Planning Bd of Lawrence*, 403 Mass. 531, 551 (1988).

In the end, NU tries to convince this Court that active citizenry through public advocacy and support of the political process equates to bad faith. That is not the law of this country.

3. Saving East Point is a Valid and the Predominant Public Purpose. Whether a conservation easement is imposed voluntarily or by a taking, the result is that the natural resource is protected from development. The issue is not the consequence of the taking, but the purpose for it. Because conservation is a valid public purpose, if potential development is prevented, be it announced, planned or reasonably foreseeable, is an incidental consequence of the taking for a valid and predominant public purpose. That the CSI Project is frustrated by a conservation taking is neither determinative nor even evidence of bad faith. *See* Town opposition to NU's cross-motion for summary judgment, p. 4.

The evidence shows that preservation of East Point was cited as the reason for the support of the Nahant Community Preservation Committee and the Finance Committee. It is the reason

that the Nahant Town Meeting voted overwhelmingly to authorize the Board to take by eminent domain and it is the purpose of the taking as stated by the Board and in the Order of Intention to Take. NU has its damages remedy, but the taking is lawful. *Pheasant Ridge Associates LP v. Burlington*, 399 Mass. 771, 777 (1987) ("we should not easily attribute improper motives to a town, and to its citizens voting at town meeting, if there were valid reasons that would have supported the town's action"). NU has simply not met its burden. *Deep v. City of North Adams*, 67 Mass. App. Ct. 1109 *4 (2006) (Rule 1:28 decision) (plaintiff owner has "not met his burden of proving that his land was taken for something other than a public purpose, or that the City otherwise acted in bad faith").

4. The Town's Long-Standing Interest in East Point Ignored by NU. NU focuses its entire argument on events after it announced the CSI Project as if Nahant hastily invented a preservation pretext to take a property no one had paid much attention to. That is not the case in Nahant, far from it. For NU to prevail, it would have this Court turn a blind eye to more than 60 years of Nahant's interest in East Point. Whether it is the early yet unsuccessful effort in the mid-1960's to acquire all of East Point, the Town's acquisition of Lodge Park, the open space plans or the designation of East Point as within the Natural Resource Zoning District, the evidence shows years of prior interest in the preservation of East Point. *See e.g.*, Town Br., pp. 3-4 (NU Property); Town Br., p. 4 (Lodge Park); Town Br., pp. 5-6 (Open Space Plans); and Town Br., pp. 6-7 (Natural Resources Zoning District designation in 1991), as examples.

It is the absence of *any interest* that is instructive on the issue of bad faith. "Although not controlling, the absence of any prior town interest in the site or its neighborhood is instructive on the matter of good faith." *Id.*; *Deep*, 67 Mass. App. Ct. at *4 (same). In *Pheasant Ridge*, the Court found that no one in that town or any of its town meeting members had ever had any interest in

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COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss. SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO. 2177CV00936

TOWN OF NAHANT,

Plaintiff

v.

12.5 ACRES OF LAND +/- SITUATED IN NAHANT, MASSACHUSETTS,

And

NORTHEASTERN UNIVERSITY,

Respondent

FILED
ESSEX SUPERIOR COURT
2017 NOV 17 P 2:33

RESPONDENT'S MOTION FOR SUMMARY JUDGMENT ON PLAINTIFF'S CLAIMS

Now comes the respondent, Northeastern University ("Northeastern"), and hereby requests this Honorable Court to award summary judgment against the Petitioner, the Town of Nahant (the "Town"), establishing that the Town is not authorized to take an interest in Northeastern's property located in Nahant, Massachusetts (the "Northeastern Property"), pursuant to Massachusetts Rules of Civil Procedure Rule 56, because there is no material dispute of fact. The proposed eminent domain taking is being pursued in bad faith for the impermissible purpose of stopping Northeastern's lawful proposed development of the Northeastern Property[1]. In further support of its Motion, Northeastern states the following:

[1] Northeastern also contends that the Town has allowed its eminent domain power to be impermissibly commandeered by private actors. Discovery has revealed that members of a private organization with a stated goal of stopping Northeastern's development are paying all costs associated with the eminent domain effort and, in exchange, have received unprecedented access and control over the process, including the

BACKGROUND

This case involves the Town's Petition, pursuant to G.L. c. 80A seeking to take an interest in the Northeastern Property. The Town has no planned affirmative public project for which it seeks to use the Northeastern Property, and instead is seeking to take a conservation easement in the Northeastern Property prohibiting construction on a twelve and a half (12.5) acre portion of the Northeastern Property (the "Subject Property"), as well as an access easement. The taking is a direct response to Northeastern's announced proposal and permit applications for construction by Northeastern of a building to host its Coastal Sustainability Institute, which would be constructed on the land above and within an existing concrete bunker on the Subject Property. If the Town is permitted to take the conservation easement, Northeastern will be prohibited from constructing the proposed building. Northeastern answered the petition to take the Subject Property by challenging the validity of the proposed taking. Northeastern files this Motion because it is undisputed that the purpose of the taking is to stop Northeastern from developing its property, which is a plainly unlawful and bad faith basis for the Town's use of its eminent domain powers.

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ability to select the Town's legal counsel, regular access to the Board of Selectmen in executive session meetings which are closed to all other members of the public, recommendations as to appointments of members of a key Town committee addressing eminent domain issues, the ability to edit Town publications related to eminent domain, direct consultation as to whether a vote on eminent domain authorization should be postponed during a pandemic, input into the language of the eminent domain authorization town meeting article and even involvement in the selection of the public purpose used to justify the taking and how to document a basis for such purpose. Northeastern is not seeking summary judgment on this issue, because it recognizes that a determination of whether the Town has improperly delegated its eminent domain power will necessarily involve questions of fact. Northeastern believes it is unnecessary for the Court to make this determination, because there is no material dispute of fact that the taking is being pursued for the bad faith purpose to stop Northeastern's project. Northeastern is not waiving its right to pursue issues related to private use of eminent domain powers and reserves its right to address the issue if the case is not resolved through summary judgment.

SUMMARY OF UNDISPUTED FACTS

Pursuant to Superior Court Rule 9A(b)(5), Northeastern accompanies this Motion with a lengthy statement of facts ("Respondent's Facts") about which it contends there is no triable dispute. For ease of review by the Court, Northeastern herein presents a summary of the undisputed facts.

In January 2018, Northeastern publicly announced that it intended to expand its existing Marine Science Center on the Subject Property to construct an additional building to host a new Coastal Sustainability Institute. The proposed use is permissible as of right under the Town's zoning bylaws as well as under the Dover Amendment, because it will serve as a nonprofit educational use. At the Town's February 15, 2018 Board of Selectmen meeting, the proposal was met with vocal opposition, including inflammatory remarks from the Members of the Board of Selectmen.

Immediately following the proposal, the Town began preparing to take the Subject Property by eminent domain to stop the development. No discussion or studies had been made to consider an eminent domain taking or the value of the Subject Property for open space or as conservation land. The deponent-designees speaking for the Town in this case (and others) have clearly testified that eminent domain is being considered as a response to the proposal and as a tool to stop the development if the Town cannot convince Northeastern not to build in its chosen location through negotiations. In addition to its efforts towards the eminent domain taking, the Town has taken other means aimed at stopping Northeastern's development, including joining two lawsuits seeking a declaratory judgment that the Subject Property is dedicated to public use and cannot be developed, which was resolved in Northeastern's favor on summary judgment. The Town

is actively appealing that decision. Additionally, the Town's Conservation Commission and Planning Board both denied Northeastern's requested permitting relief, which denials are currently under appeal and pending before this Court.

As of the Town's September 8, 2021 decision to take the Subject Property, the Town had still engaged in no studies to determine the conservation/open space value of the Subject Property. The Town's most recent Open Space Plan did not contemplate the acquisition of any interest in the Subject Property. The Town has, however, engaged in studies to determine the cost of Northeastern's development to the Town, and the Town's Board of Selectmen directly and emphatically communicated to the Town's voters that it would cost them more in taxes to allow Northeastern to develop the Subject Property than it would to take the Subject Property by eminent domain.

Prior to any vote by the Town to authorize the taking, Northeastern publicly offered to create a conservation restriction over the majority of the Subject Property, other than the land needed to complete the development. The land subject to the offered conservation restriction includes all the areas on the Subject Property that are in an undeveloped state and reserved for development only the space within, some of the land above and a very small area immediately adjacent to a concrete bunker constructed by the U.S. military during the World War II era. At deposition, the Town has identified no environmental, ecological, or historic features of the bunker or the land above it needing protection from Northeastern's development. Nonetheless, the Town rejected Northeastern's offer.

At a May 15, 2021 special town meeting, the Town voted to authorize the Board of Selectmen to take the Subject Property by eminent domain. On September 8, 2021, the

Board of Selectmen voted to adopt an Order of Intention to Take Conservation Easement by Eminent Domain (the "Order"), declaring its intent to take the conservation and access easements over the Subject Property. The Order identifies the putative purpose of the proposed eminent domain taking as "to preserve the [Subject Property] in perpetuity in [its] natural, scenic, and open condition and to protect against any use of the [Subject Property] that will interfere with the conservation values of said property." On September 16, 2021, the Town filed the Petition initiating this action, seeking that the Court authorize the taking and set compensation.

ARGUMENT

I. Summary Judgment Standard

A motion for summary judgment shall be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to summary judgment as a matter of law." Mass. R. Civ. P. Rule 56(c). In deciding a motion for summary judgment, "a court must determine judgment as a matter of law based on all uncontested evidence, that is, evidence favoring the nonmovant and 'uncontradicted and unimpeached' evidence favoring the movant." Adams v. Schneider Electric USA, 492 Mass. 271 (2023).

II. Law Regarding Bad Faith Takings

It is settled law that "a municipal land taking, proper on its face, may be invalid because it was undertaken in bad faith." Pheasant Ridge Associates Ltd. Partnership v. Town of Burlington, 399 Mass. 771, 775 (1987). "Bad faith in the use of the power of eminent domain is not limited to action taken solely to benefit private interests. It

includes the use of the power of eminent domain solely for a reason that is not proper, although the stated public purpose or purposes for the taking are plainly valid ones." Id. at 776. The Pheasant Ridge Court expressly recognized that taking land solely to block a proposed development project would be clearly improper. Id. at 777.

In determining the potential improper motives of a municipality, the Court must look to what agents of a town acting under its authority have not only said but should also draw inferences "from what they have done and what they have not done." Id. at 777. Statements made by a Town's officials can be relevant in determining the true purpose behind an eminent domain taking. Id. at 779-780 ("The town is not bound by the statements of the chairman of the board of selectmen, nor are those statements admissions that may be used against the town. The town is bound, however, when, after hearing the chairman's uncontested remarks and without any consideration by any town agency or the town meeting itself of the merits or the relative merits of the acquisition of the site for the purposes stated, the town meeting voted to take the property"). In Pheasant Ridge, the Supreme Judicial Court found it particularly relevant that the stated purpose of the taking in that case, for park and affordable housing uses, was not included in any recent studies by the town of its needs for parks or potential sources of affordable housing. Id.

The Pheasant Ridge case involves strikingly similar facts to this case. In both cases, a landowner proposed to develop property in a manner under which traditional zoning controls were overridden by state statutes (G.L. c. 40B in Pheasant Ridge and the Dover Amendment in this case). In both cases, the Town attempts to use the eminent domain process to stop a development that it could not prohibit through its zoning powers. In both cases, the taking was authorized by a Town Meeting vote with a

background of clear public statements from the Board of Selectmen showing that the purpose of the taking was to stop the development. The Supreme Judicial Court held, as a matter of law, that the taking in the Pheasant Ridge case was made in bad faith and was therefore invalid. The undisputed factual record supports the same result here.

III. There Is No Material Dispute of Fact that the Town Is Seeking to Take the Northeastern Property to Stop Northeastern's Development

It is an impermissible use of the sovereign power of eminent domain to block an undesired development. Id. at 777 ("Clearly, taking land solely to block G.L. c. 40B, § 21, low or moderate income housing would be improper"); Carroll County v. Bremen, 256 Ga. 281, 282, 347 S.E.2d 598 (1986) (eminent domain taking was in bad faith and invalid where true purpose was to prevent construction of a sewage treatment plant); Earth Management, Inc. v. Heard County, 248 Ga. 442, 283 S.E.2d 455 (1981) (land taking purportedly for park purposes was invalid when conducted to prevent construction of hazardous waste disposal facility); City of Lafayette v. Town of Erie Urban Renewal Authority, 434 P.3d 746 (Colorado, 2018) ("The stated public purpose of an open space buffer is valid, but blocking Erie's planned development—planning that predated Lafayette's condemnation petition—is not lawful."); Middletown Township v. Lands of Stone, 595 Pa. 607 (2007) (taking purportedly for recreational purposes was invalid where true purpose was to prevent undesired development); Borough of Essex Fells v. Kessler Institute for Rehabilitation, Inc., 289 N.J. Super. 329 (Rejecting a taking purportedly for park land and water recharge and determining that the true purpose was to prevent development of a rehabilitation facility, finding "[t]he credible evidence in this case justifies the conclusion that, but for the public opposition to Kessler's development proposal, borough officials would not have sought to prevent Kessler's use of the

property. **The power of eminent domain cannot be justified when used in response to public opinion against a proposed land use.**"(emphasis added)); In re Real Property in Incorporated Village of Hewlett Bay Park, 48 Misc.2d 833 (1966) ("This court has come to the conclusion that **the real purpose of this condemnation proceeding in larger part is not to use this property for something affirmative, so much as it is to prevent its use for something else which the village authorities regard as undesirable. Such is a perversion of the condemnation process**" (emphasis added)).

The Town has conceded through its Rule 30(b)(6) designees that it is using eminent domain as a "tool" to prevent or alter Northeastern's development plans.[2] App., p. 707, Ex. 9 (Town Deposition-Spencer, p. 48); App., p. 2856, Ex. 89 (Town Deposition-Cullinan, pp. 89-90); Respondent's Facts, ¶¶11, 24. This testimony was corroborated by one of the Town's Selectmen who voted to issue the Order to take the Northeastern Property. App., pp. 2779, Ex. 88 (Antrim Deposition, pp. 153-154[3]; 168[4]) Respondent's Facts, ¶¶25-26, 28). Selectman Antrim expressly informed the public that the Town could "stop" the project "with eminent domain."[5] App., p. 3161, Ex. 92 (Town Admission, Response 15); Respondent's Facts, ¶26. The Town asserts that the

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[3] "Q: Did you at that point, believe that eminent domain provided a tool to prevent development of or to negotiate an acceptable resolution with Northeastern? A. Yes.

...

Q: It was your opinion as a member of the board of selectmen that eminent domain gave you the ability to stop Northeastern in their proposal...

A. That was my hope, yes.

[4] "Q: and the board of selectmen did view taking a right in the property to be a means of preventing Northeastern from constructing the property...

A. Yes."

[5] "[T]he argument was 'we can't stop them, but with eminent domain, we can, and we'll have the leverage to negotiate a more acceptable solution."

authorization of the eminent domain taking was the "logical consequence" of the Town being unable to stop Northeastern from pursuing its proposed project through negotiations. App., p. 721, Ex. 9 (Town Deposition-Spencer, pp. 103-104); Respondent's Facts, ¶29.

There is no factual dispute that the Town had not engaged in any discussion or activity towards an eminent domain taking of the Northeastern Property until Northeastern announced its proposed development. App., p. 2597, Ex. 86 (Barile Deposition, p. 123); Respondent's Facts, ¶13. Northeastern's announcement was immediately unpopular with some residents and all members of the Board of Selectmen, who immediately vocally and vehemently opposed the project. App., pp. 2852, Ex. 86 (Barile Deposition, pp. 67-68); Respondent's Facts, ¶¶5-10. Immediately after the presentation, the Town began considering eminent domain in response. App., p. 2856, Ex. 89 (Cullinan Deposition, pp. 89-90)[6]; Respondent's Facts, ¶11. From the onset of the Town's consideration of eminent domain, the sole purpose for such consideration was to "stop Northeastern." App., p. 2572, Ex. 86 (Barile Deposition, p. 27); Respondent's Facts, ¶12.

As the Board of Selectmen sought authority to take the Northeastern Property by eminent domain, the Board was clear with the public that its intention was to use such authorization to stop Northeastern's project. The Board sent a letter to all the Town's citizens with a document called "the Second Statement of the Nahant Board of Selectmen on Preserving East Point as a Wildlife Preserve" (the "Second Statement"). App., p 2860,

[6] "Certainly after the Northeastern's presentation and the vehement sort of disapproval of it or opposition to it at that meeting, I think it was pretty clear to a lot of people in town, including the board of selectmen, that, you know, in order to conserve and protect this property, eminent domain may be a tool that we have to use."

Ex. 89 (Town Deposition-Cullinan, p. 107); App., p. 1936-1959 and 3070-3093, Ex. 91, (Town Deposition, Exhibit 13); Respondent's Facts, ¶31. The Second Statement made the Board's intent clear, stating that the Northeastern Property "will soon be developed unless you use your vote to prevent it." App., p. 1937, Ex. 91 (Second Statement); Respondent's Facts, ¶33. Individual communications from Selectman Antrim stressed to the Town's citizens that their vote was a "binary choice" for development or not and that they should be deciding whether they want to have a building or not. App., p. 2779, Ex. 88 (Antrim Deposition, p. 154); App., p. 3161, Ex. 92[7](Town Admission, ¶16); Respondent's Facts, ¶35. Antrim also communicated that the eminent domain vote would give the Board of Selectmen "leverage" to deal with Northeastern. Id.; Respondent's Facts, ¶37.

The Town's overall conduct is fully consistent with its admitted intention to stop Northeastern. As one Selectmen stated immediately after hearing Northeastern's proposal, the Town's attitude was "we need to take every step legally" to stop the project. App., p. 3155, Ex. 92 (Faller Affidavit, ¶8)[8]; Respondent's Facts, ¶6. Consequently, the Town engaged in a scorched earth legal campaign to stop the project. It joined a losing lawsuit to declare the Subject Property had been dedicated to public use and has appealed to the Appeals Court (and unsuccessfully to the Supreme Judicial Court through a petition for Direct Appellate Review, which was denied) this Court's decision granting Northeastern summary judgment finding that no dedication was ever made. The Town

[7] "Now the question becomes a simple one. Do you want that land developed or not? It's a binary question. It's yes or no. There's no half buildings, no part time buildings. It's do you want a building, yes or no?"
[8] The referenced speaker, Selectmen Lombard, later went further than the "legally" qualification would suggest, stating that he was willing to "go to jail" if that would stop Northeastern's project. Id.); Respondent's Facts, ¶7. Similarly, the Town as a whole has moved far past available "legal" or lawful steps to stop the project.

has denied Northeastern virtually all land use permits that it has requested on the Subject Property, requiring Northeastern to appeal each decision to this Court. Currently Northeastern and the Town are adverse parties in eight (8) separate legal actions involving the use of the Subject Property, including six (6) currently before this Court and another two (2) that have been appealed from this Court. Respondent's Facts, ¶75.

The Town admitted that it sought to take the Subject Property to stop Northeastern from developing its property consistent with its plans, which were unpopular within the Town. No reasonable jury could find otherwise. Taking property by eminent domain to stop an undesired project is ***not*** a permissible public purpose. Pheasant Ridge, *supra* at 777. The Town's proposed taking is being pursued in bad faith and is not valid. The Court should so rule.

IV. The Town's Stated Purpose of Conserving the Northeastern Property is Not a Bona Fide Public Purpose

Northeastern understands that the Town's argument is that notwithstanding its clear intent to take the Northeastern Property to stop Northeastern from pursuing its development, it can salvage the taking by invoking in talismanic fashion "conservation" as its public purpose. By this logic, the Town would be allowed to use eminent domain to prevent a private property owner from pursuing an as-of-right development by claiming that it wants to "conserve" the land slated for development. Such an argument would render Pheasant Ridge and the nationwide jurisprudence surrounding bad faith takings meaningless. Under the Town's theory, any unpopular development project could be blocked by a taking authority alleging a "conservation" purpose. The argument is meritless.

Northeastern does not dispute that under some circumstances, a taking authority may utilize eminent domain to protect land determined to be environmentally sensitive. However, Pheasant Ridge makes clear that a town may ***not*** utilize a pretextual purported public purpose to support a taking intended to stop a specific unpopular development project. That is precisely what is occurring here.

The Pheasant Ridge court relied heavily on the town's actions and lack of actions in connection with its stated purpose for taking the property. It found that the lack of studies concerning the need to fill the putative purpose to be instructive in determining that the true purpose of the taking was to stop the development. Much of the Supreme Judicial Court's reasoning is particularly applicable to the analysis in this case:

> The record is clear that in recent years the town had studied its needs for parks and recreation and that neither the Center Street site nor any parcel in the general vicinity of that site had been considered for acquisition for park or recreational uses. There is no indication in the record that before the plaintiffs' proposal was announced any town board was seeking to provide low and moderate income housing on or near the site.
>
> The matter of taking the subject site came forward only when the plaintiffs' proposal became known. Although not controlling, the absence of any prior town interest in the site or its neighborhood is instructive on the matter of good faith. Pheasant Ridge, *supra* at 778.

The situation here is identical. The Town engaged in no studies demonstrating a need to "conserve" the Northeastern Property until Northeastern announced its proposed development. App., p. 2580, Ex. 86 (Barile Deposition, p. 59); Respondent's Facts, ¶43. The Town created an Open Space Plan as recently as 2016 (the "2016 Plan"), just two years before Northeastern announced its proposed project, which did not recommend any eminent domain takings of the Subject Property or any expansion of the Town's abutting parkland, or even any substantial changes thereto. Crucially, the 2016 Plan **does not even**

list the Subject Property as an open space resource other than a small beach on the Northeastern Property that would not be impacted by Northeastern's development proposal. App., pp. 2949-3043, Ex. 91 (2016 Plan); Respondent's Facts, ¶52-55. The Town's Rule 30(b)(6) deponent was unable to identify any studies that the Town had conducted specifically relating to the Subject Property[9].

Tellingly, the Town is unable to identify a single environmental, ecological, historic, archeological or any other feature of the Northeastern Property needing protection in light of Northeastern's offer to create a conservation restriction on all areas of the Subject Property except the development footprint situated on top of a concrete bunker. To the extent that there are environmental or other features on the Northeastern Property for which there is a public interest in protection (which the Town has not bothered to study), the Town does not need to use eminent domain to achieve that protection. Northeastern has voluntarily offered to record a conservation restriction over the vast majority of the land at issue. App., p. 709, Ex. 9 (Town Deposition-Spencer, p. 54); App., pp. 2926, 2948, Exs. 90, 91) (Town Deposition Exhibit 5); Respondent's Facts, ¶45. Instead of accepting Northeastern's public offer, the Town opted to pursue an eminent domain taking. The only objective achieved by the taking not achieved by accepting the voluntary conservation restriction would be to prevent the construction of

[9] The Town may suggest that its decision in the 1990s to place the Northeastern Property in a zoning district designated as "natural resource" should serve as a substitute for formal studies of the Subject Property as conservation land. The argument would be meritless. It is undisputed that the natural resource zoning district expressly allows nonprofit educational use (such as Northeastern's proposed use) as an as of right use, and therefore the zoning placement could *not* reflect a determination by the Town that Northeastern should not be permitted to further develop its property. The Town specifically recognized in its Open Space Plans that any zoning protection of the Subject Property as open space was "limited." App., p. 2751, Ex. 88 (Antrim Deposition, p. 44); Respondent's Facts, ¶56.

the building[10], demonstrating unequivocally that the Town's purpose is to stop the development. The Town's Rule 30(b)(6) designee was unable to identify a single feature of the bunker that required protection from the development other than her belief that it compromised the aesthetics of the Northeastern Property.

There is no material dispute of fact as to whether the Town has a *bona fide* "conservation" purpose for its taking, separate and apart from its impermissible motivation in stopping Northeastern's project. There is no such legitimate purpose.

V. The Dominant Purposes for the Taking Are Not Permissible

The Court is to look for the "dominant" reasons for the taking in determining whether it is permissible. Pheasant Ridge, *supra* at 777. There is no question that the "dominant" reason the Town is pursuing this course is to prevent Northeastern from constructing a building on top of the existing concrete bunker.

The more specific public[11] reasons for the Town wanting to prevent Northeastern from developing its property are also impermissible. The initial reaction by the Board of Selectmen to Northeastern's proposal was to be concerned about the increased population of students and professors on the Northeastern Property, potential increased traffic and the cost to the Town. App., p. 2865, Ex. 89 (Town Deposition-Cullinan, p. 125); App., pp. 2582-2583, Ex. 86 (Barile Deposition, pp. 68-69); Respondent's Facts, ¶15. These are issues that the Town may consider in any permitting applications filed by Northeastern to

[10] There has been some testimony in depositions suggesting that Northeastern's voluntary offer to create acres of conservation would not give residents of the Town sufficient access rights to the Subject Property Northeastern disagrees. However, if the sole issue of dispute is access, the Town could (and has proposed to) take an access easement. No conservation easement is necessary to provide the Town desired access, which serves only to stop development of the Subject Property.

[11] Northeastern believes that there are private motivating factors behind the taking that are clearly impermissible and that the Town is allowing wealthy property owners to pay the Town millions of dollars to pursue the taking to protect their views and privacy. See Footnote 1. This Motion concerns only the purported reasons for the taking related to public issues.

the extent its bylaws provide discretion to do so. It is **not** a proper use of the Town's eminent domain power to prevent the Town from incurring infrastructure impacts arising out of a development project. Pheasant Ridge, *supra* at 777 ("To have taken the site involved in this case to prevent the impact of the proposed development on the water, sewer, traffic, and other problems of the town would not have been action in good faith").

Importantly, although the Town engaged in **no** studies concerning the purported conservation and open space value that the Northeastern Property offered; it did engage in detailed studies and analysis regarding the costs the Town believes that it will incur if Northeastern is allowed to construct its development proposal. The Town's FinCom analyzed this issue in detail, and then the Town paid a private consultant to do its own analysis to check the FinCom's results.

The Board of Selectmen then used these analyses prominently in their communications with Town residents about the vote to authorize eminent domain. In the Second Statement, a mailing that was sent out to all Town citizens, the Board of Selectmen, armed with pages of analysis, informed voters that Northeastern's project would cost taxpayers between $17,000,000 and $22,000,000. App., p. 3070, Ex. 91 (Second Statement); Respondent's Facts, ¶72. The Board firmly informed the voters: "The facts are clear: it will cost you more on your taxes to host an expanded Northeastern than taking part of the property by eminent domain." Id. at 3017); Respondent's Facts, ¶34. This letter accompanied a 21-page report with graphs, charts and figures supposedly supporting this conclusion. Id. at 3072-3093; Respondent's Facts, ¶32.

Again, no studies have been conducted showing a need to conserve Northeastern's property for environmental, open space or other reasons, so no such

studies were presented to voters. The only substantive information presented to the Town's voters related to the costs of hosting Northeastern. No possible conclusion can be drawn but that the Town's infrastructure and cost concerns were a dominant reason the Town decided to stop Northeastern's project by taking the Northeastern Property. The taking is being pursued for improper bad faith purposes. As in Pheasant Ridge, the Town voters were asked by the Board of Selectmen to authorize a taking for reasons other than the purported public purpose:

> The presentation by the chairman of the board of selectmen of the motion ... shows beyond question that the town meeting was being asked to consider the motion, not on the merits of the acquisition of the site for uses stated in the motion, but to bar the plaintiffs' development. The town is not bound by the statements of the chairman of the board of selectmen, nor are those statements admissions that may be used against the town. The town is bound, however, when, after hearing the chairman's uncontested remarks and without any consideration by any town agency or the town meeting itself of the merits or the relative merits of the acquisition of the site for the purposes stated, the town meeting voted to take the property.
> Id at 779.

In Pheasant Ridge, the trial court awarded summary judgment to the property owner determining that the taking was invalid because the record established that the taking was made to stop the proposed development. The Supreme Judicial Court affirmed the decision in its *de novo* review. In this case, it is equally clear that the Town is attempting to take the Subject Property to stop Northeastern's development. No possible factual dispute exists about this point. The result must be the same. The proposed taking is invalid as a matter of law.

CONCLUSION

For the foregoing reasons the Court should award summary judgment to Northeastern University and issue an Order determining that the proposed taking is not valid.

Respectfully Submitted,

NORTHEASTERN UNIVERSITY,

By its Attorneys,

THE McLAUGHLIN BROTHERS, P.C.,

By: */s/ Joel E. Faller*

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Dated: September 15, 2023

CERTIFICATE OF SERVICE

I, Joel E. Faller, III, hereby certify that I have on this 15th day of September, 2023, served the foregoing by emailing a copy thereof to James D. Masterman and James Ponsetto at mastermanj@gtlaw.com and ponsettoj@gtlaw.com.

By: */s/Joel E. Faller*
Joel E. Faller

9C CERTIFICATE

I, Joel E. Faller, III, hereby certify that I complied with Massachusetts Superior Court Rule 9C by conferring by telephone with James Ponsetto on September 1, 2023 in a good faith effort to narrow areas of disagreement to the fullest extent.

By: */s/Joel E. Faller*
Joel E. Faller

39.2

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO. 2177C000936

TOWN OF NAHANT,

Plaintiff,

v.

12.5 ACRES OF LAND+/- SITUATED IN NAHANT, MASSACHUSETTS,

and

NORTHEASTERN UNIVERSITY,

Respondent

FILED
ESSEX SUPERIOR COURT
2023 NOV 17 P 2:33

TOWN OF NAHANT'S MEMORANDUM OF LAW IN OPPOSITION TO NORTHEASTERN UNIVERSITY'S MOTION FOR SUMMARY JUDGMENT

summary judgment for the Town, NU's remedy is not another round of dispositive motions, but to the SJC.

ARGUMENT

I. The Motive for the Taking is Protection and Continued Preservation of East Point.

A. A Determination of Bad Faith Must Be Based on a Finding that the Taking was Made Solely for an Improper Purpose.

There is no dispute that the consequence of the taking proposed on East Point will stop the CSI Project. There is also no dispute that public officials voiced support for stopping the CSI Project, as did many citizens of the Town. When the CSI Project threatened to endanger the natural landscape and open space of East Point, ruining how it had been used and enjoyed by the citizens of Nahant for years, the Board of Selectmen acted to protect what was precious, vindicating the long-held interest in the preservation and protection of the area. Town Meeting, made up of Nahant citizens who were also familiar with East Point long before the 2021 ATM, voted overwhelmingly in support. There is nothing improper about the Town's elected officials speaking for preservation and against a project or a policy which those officials believe is inconsistent to that objective; that is what they were elected to do. The same is true of appointed officials of the Open Space Committee, Conservation Commission, CPC and FinCom. Nevertheless, to support its position, NU weaves a tale of precipitous public action stirred up by renegade public officials serving only illicit goals contrived to block a project for an area of no particular note with a complicit Town Meeting. To the contrary, most of the public comments and actions of elected and appointed officials and citizenry alike are about saving the treasured public resource that is East Point. *See e.g.* Town SoF ¶ 106 (a 2018 citizens' petition calling for preservation of East Point signed by

58% of voters)[2]; Town SoF ¶ 108-112 (local nonprofit groups, NPT and Keep Nahant Wild, supporting efforts to preserve East Point); Town SoF ¶¶ 121-128 (the Board and the CPC coordinating regarding CPA funding to support open space acquisition); Town SoF ¶¶ 116-119 (the Board's 2020 First and Second Statements lay out a vision for preservation of East Point); Town SoF ¶¶ 133-137 (Nahant's independent voters overwhelmingly authorize the taking and CPC funding more than three years divorced from the initial presentation concerning the CSI Project at East Point).

NU equates stopping the CSI Project with bad faith; it is NU's entire case. But taking will always consequently frustrate the plans of an owner. Even if stopping a planned project is a reason for the taking expressed by its proponents, it is not determinative of bad faith as a matter of law. Bad faith may be found only if the power of eminent domain is used "*solely* for a reason that is not proper" or that an improper reason is shown to be the "dominant" reason. Order of Karp, J. (Dkt. 25) at 3 (quoting *Pheasant Ridge*, 399 Mass. at 776-777 (*emphasis added*)); *Benevolent & Protective Order of Elks, Lodge No. 65 v. Planning Bd. of Lawrence*, 403 Mass. 531, 552 (1981) ("*Elks*") (where the SJC reiterated its statement from *Pheasant Ridge* "that there are certain motives or reasons that would be unlawful *if they were the dominant reasons for [a] taking*") (*emphasis added*); Order of Karp, J. (Dkt. 25).

The parties agree on the standard to be applied. For the Court to determine that a taking is in bad faith, it must find that the Town's sole or dominant reason for the taking is improper. NU

[2] "Our goal is to preserve East Point as the conservation area it is today. East Point is jointly occupied by the [MSC] on land owned by Northeastern University and by the Town of Nahant's Lodge Park. Natural beauty, geological wonders, abundant wildlife, flora and fauna thrive in this exceptional environment and know no boundaries. It is not difficult to imagine the impact of a 60,000 sf building, no matter how skillfully designed, on this unique. natural environment. It would be devastating....We assert that this structure...can be built on a less sensitive site...We, then, the signatories below, citizens of Nahant, request University to locate this facility to another place, leaving East Point in its natural condition." *Id.* (quoted language from 2018 open letter and petition to NU signed by nearly 1,700 Nahant citizens (58% of eligible voters)); Ex. 54, pp. 1329-1334.

Br. at 5, 14. There are two principles which guide the Court's determination. The first is whether the taking predominantly benefits private individuals. That is not an issue in this case, as measured by the lack of evidence adduced by NU. The second, and at issue in this Motion, is that "[i]n examining a municipality's proposed exercise of the power of eminent domain for inferences of bad faith, [the SJC] consider[s] whether the municipality has evinced prior interest in the area or its neighborhood and whether its method of acquiring the property accords with usual practices. *Elks* at 552; *see* Dkt. 25. NU does not argue that the Town failed to follow its usual practices[3], leaving this Court with only one question: whether there was prior interest in East Point sufficient to justify the Town's taking by eminent domain. The answer is categorically "yes."

B. Nahant has a Longstanding Prior Interest in East Point.

To prove "dominant reason," NU must show that the Town had no prior interest in the preservation or public use of East Point, which is the stated purpose of the taking[4], before the early 2018 announcement of the CSI Project. Even if there had been no prior interest, that alone is not determinative of bad faith. "Although not controlling, the absence of any prior town interest in the site or its neighborhood is instructive on the matter of good faith." *Pheasant Ridge* at 778 (*citing Chelmsford v. DiBiase,* 370 Mass. 90, 93 (1976)[5]). In *Pheasant Ridge*, there was no evidence that before the owner presented plans for an undesirable housing project, the town of Burlington had

[3] Contrast the conduct of Burlington in *Pheasant Ridge*, where the taking authority failed to follow its usual practices in connection with eminent domain. *Id.* at 778.

[4] Paragraph 3 of the Order of Intention to Take describes the public purpose to include, but not be limited to: Preserv[ing] the East Point Easement Areas (as hereinafter defined) in perpetuity in their natural, scenic, and open condition and to protect against any use of the East Point Easement Areas that will interfere with the conservation values of said property. The public benefits…include, without limitation: the preservation of open space for the use and enjoyment of the general public, the creation and buffering of an expanded Henry Cabot Lodge, Jr. Memorial Park, … the protection of the scenic and natural beauty and character of the East Point Easement Areas, the protection of public access to the sea, the protection of wildlife habitat, wildlife connectivity [and other related benefits]." Ex. 15, p. 0873.

[5] "The parties do not contest the finding that the taking was made in good faith and for a public purpose. Nor could they. Cf. *Poremba v. Springfield,* 354 Mass. 432, 434-435 (1968). The conservation commission had the acquisition of the tract under consideration for more than ten years, and HAC recognized that the tract adjoins 100 acres of town forest." *Chelmsford v. DiBiase,* 370 Mass. 90, 93 (1976).

39.3

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss. SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO. 2177CV00936

TOWN OF NAHANT,	)
Plaintiff	)
v.	)
12.5 ACRES OF LAND +/- SITUATED IN NAHANT, MASSACHUSETTS,	)
And	)
NORTHEASTERN UNIVERSITY,	)
Respondent	)

FILED
ESSEX SUPERIOR COURT
2023 NOV 17 P 2:33

REPLY REGARDING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT ON PLAINTIFF'S CLAIMS

I. The Town Conceded in its Opposition that it Is Attempting the Taking to Stop the Project

The Northeastern Motion[1] established, through the testimony of the Town's witnesses that the dominant motivation for the taking is to stop Northeastern's proposed project (the "Project") and that, but for Northeastern's intent to pursue the Project, the Town would not be proceeding with the taking. The Town admits this fact in its Opposition: "There is no reason for the Town to have considered a taking by eminent domain until NU reversed course [by pursuing the Project].[2] Opposition, p. 7; See also

[1] The "Northeastern Motion" herein refers to its motion for summary judgment. The "Northeastern Opposition" refers to Northeastern University's Opposition to Town of Nahant's Motion for Summary Judgment Regarding Northeastern University's Challenge to the Validity of the Town's Order of Intention to Take by Eminent Domain Pursuant to G.L. c. 80A, which Northeastern incorporates herein by reference. The "Opposition" refers the Town's opposition to the Northeastern Motion. Otherwise, definitions set out in the Northeastern Motion are used herein.

[2] Northeastern disputes that the Project is a reversal of course. The Town's argument that Northeastern previously agreed to dedicate the land to conservation has been rejected by this Court.

Opposition p. 3 ("There is no dispute that the consequence of the taking proposed on East Point will stop the Project" and the "Board of Selectmen acted" in response to the proposed Coastal Sustainability Institute project); Opposition, p. 7, n. 8 (Identifying prior instance of the Town using eminent domain to stop the residential development of a golf course and claiming it serves as a precedent for the instant proposed taking).[3]

These are not casual admissions. They are fatal to the Town's attempt to deny that the taking is being pursued in bad faith. It is impermissible to use eminent domain to block an undesired development. Pheasant Ridge Associates Ltd. Partnership v. Town of Burlington, 399 Mass. 771, 777 (1987); *see also* cases cited in the Northeastern Motion, pp. 7-8. The Town attempts to brush away the nationwide consensus that eminent domain may not be used to block a development project in a footnote that misstates both the conclusions of the cited cases and Northeastern's reason for citing them. Opposition, p. 7, n. 9. Contrary to the Town's assertion, the out-of-state cases in the Northeastern Motion were *not* cited for the proposition that acting "precipitously" in a taking constitutes bad faith. Each of these cases, like Pheasant Ridge, invalidates a taking because the true purpose was to stop a development project. Although some involved "precipitous" action constituting evidence of the true purpose of the taking; the basis for each holding was the improper purpose, not the speed in which the taking was made.[4]

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[3] In its response to the Northeastern Facts, the Town does not dispute that it "decided to pursue eminent domain when it felt that it had exhausted any opportunity to negotiate another site for [the Project] (Response 23) and that its Board of Selectmen viewed eminent domain "as a means of preventing Northeastern from constructing [the Project] (Response 28).

[4] In fact, the decision to take the Subject Property was "precipitous," notwithstanding the three-year period that eminent domain was being discussed (including a 1-year delay in the Town Meeting vote due to COVID). During that period, the Town conducted no studies of the Subject Property to determine its value for conservation land, and developed no plan for how the Town would use it, other than to prohibit all development. From the time the Project was announced, the Town immediately took every conceivable action it could think of to stop it, including pursuing eminent domain, amending its wetlands bylaw, illegally attempting to amend its zoning bylaws to prohibit non-profit educational use and joining a

The Town further suggests that Northeastern must prove that the Town is taking the Northeastern Property "solely" for improper purposes. That is not accurate. The taking is invalid if improper purposes are "the dominant reasons." That is clearly the case here. But for Northeastern's decision to pursue the Project, which it had every right to construct, the Town has admitted that it would not be taking the Subject Property. That is the very definition of bad faith. Pheasant Ridge, *supra* at 777.

II. The Town's Alliance with "Keep Nahant Wild" Does Not Show a Legitimate Conservation Interest in the Property

Tellingly, the Town argues that the fact that the Keep Nahant Wild ("KNW") group supported the Town's efforts somehow shows that these efforts were motivated by historic conservation concerns. In the view of the Town's former Selectman, Francis Barile, KNW were "[a] group led by wealthy residents who will apparently stop at nothing to prohibit Northeastern University's Marine Science Center from enhancing and ...expanding their facility," most prominently led by Christian Bauta. App. pp. 2605-2606, Ex. 86. Notably, Mr. Bauta spoke at the February 15, 2018, Board of Selectmen meeting (expressly stating he spoke for KNW) and demanded that Northeastern move the project to the City of Lynn, issuing plain threats:

> So let's make this easy. Make it easy on us and easy on you, because we're going to make it ugly for you guys. I'll tell you right now, really ugly. We have the wherewithal to make it really ugly. I don't think you want to go there. You might be able to push this over on other communities, but this is a small, united community. And I would just say to my fellow residents, if they want to go ugly on us, let's stick together. We can be united behind the idea of keeping our town for Nahanters.
> App. p. 3232, Ex. 96.

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meritless lawsuit seeking to prohibit the development. Only after each of these efforts failed, and days after the Town secured the private funding it determined it needed for the taking did the Town vote to take the Subject Property as a last resort effort to stop development. The Town's attempt to stop the Project was far from deliberative.

EXHIBIT 1

NAHANT OPEN SPACE PLAN
1989



EXHIBIT
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NAHANT OPEN SPACE PLAN

April 28, 1989

NAHANT OPEN SPACE COMMITTEE

Patricia Livingston, Chair
Charlotte Moore, Secretary
Donna Arivella
Joseph Ayers
William Crawford
Susan Downs-Cripps
Michael Leger
Linda Pivacek
Linda Tanfani

IV. EVALUATION OF EXISTING RESOURCES AND DETERMINATION OF FUTURE NEEDS

A. Evaluation of Existing Resources

Nahanters love the outdoors and make frequent use of it. For example, 90% of the people who responded to an Open Space survey said they visited the beaches and Lodge Park at East Point often, 100% watched the ocean often, 86% swam often and 75% engaged in birdwatching and nature study often.

The Committee worked with the Massachusetts Natural Heritage and Endangered Species Program to determine if any rare or endangered species or ecologically significant natural communites occur on Nahant. If so, they would figure prominently in the goals and objectives of the Open Space Plan.

There is an historic record of Seabeach Dock (Rumex pallidus), a species of special concern in Massachusetts, in Nahant. Seabeach Dock occurs in a coastal habitat, along beaches, rocks and salt marshes, but it has not been confirmed in Nahant since the 1800s. The Open Space Committee inspected an 1890 herbarium collection at the Town library and found a specimen of Knotted Pearlwort (Sagina nodosa), listed as threatened in Massachusetts. Knotted Pearlwort is known from only three sites in the state. Knotted Pearlwort occurs on rocky or sandy soil and moist shores or beaches. Unfortunately, no current sightings of these species were made and it can only be assumed that these imperiled plant species no longer grow on Nahant. Please see Support Documentation: Rare Species and Ecologically Significant Natural Communities and The Wildlife of Nahant.

An aquatic community type known as Marine Rocky Shore has been documented on Northeastern University's property and Egg Rock. Other rocky shore aquatic communities and fresh or brackish wetland areas occurring on Nahant are also worthy of protection.

Most of Nahant was developed long ago. Pressure on what minimal open space remains will only intensify. Nahant will only become more and more attractive with time - it is a beautiful oasis, a world away, but only a short commute from Boston. In the 1960s, it was thought that only 100 more houses could be built on Nahant, but at least 120 houses have been built since then. The number of dwelling units increased 10% (from 1,397 to 1,547) from 1970 to 1980, even though the population declined by about 5% (1986 Master Plan).

As pressure intensifies, land that was once considered inadequate, unsuited or protected by state or federal statute, has been developed. Any Nahanter can look around town and see evidence of this: houses built on stilts or on rock ledges.

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The golf course provides another recent - and painful - example of this phenomenon. In 1964, the Town voted to sell the land to Daniel Marcotte for $1 in return for the land being developed as a golf course. The Town retained the right of first refusal. In 1972, the golf course was offered to the Town and then sold for $200,000 to Brothers II, owned by William and Anthony Conigliaro. In 1985, the Town passed on its option to buy the golf course and it was then sold to Stephan O'Malley and Peter Dawson for $425,000. Townspeople thought the golf course was protected from development due to restrictions in the deed. In July 1988, the property was for sale again, this time for $2 million. After many meetings - including one special town meeting when a variety of subdivision scenarios were described - the Town voted to buy the property for a fair price (not to exceed $1.25 million) or take it by eminent domain. This prudent action saved the land from being lost to development.

According to a survey conducted by the Open Space Committee, most Nahanters believe their open space/recreation needs are fairly well met in a general sense, but believe improvements are warranted in specific areas (see Support Documentation: Nahant Open Space Survey). For example, 80% stated that more emphasis should be placed on: protecting open space; conserving wetlands, wildlife, and natural areas; access to the coastline; access to peripheral paths; and management of existing open spaces and rights of way. According to the survey, top priority should be given to improving the following open space/recreation opportunities: conservation areas; walking paths; swimming; bicycle/jogging paths; birdwatching/nature study areas; and multi-use of the golf course.

Sixty-three people added hand-written comments to their surveys. Of these sixty-three people, twenty-one expressed concern about the importance of access to the coastline and traditional paths along the coast. Six stated that Lodge Park should be better managed. Four stated that beaches must be clean and free from the effect of sewer outfall. Three were concerned with multi-use of the golf course, three urged general protection and stewardship of open space, and three affirmed the creation of the Open Space Committee.

B. Open Space Challenges

Two broad challenges confront Nahant with regard to open space: protection and management.

Protection

There are only two areas in town that are actually dedicated as open space: the Audubon thicket and a strip of land along Summer Street and Nahant Road given to the town as conservation land by

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the Bangs trust. A third piece of land (the Lodge grant, a 14,544 square foot triangle of land at the entrance to East Point) is possibly dedicated as open space. Other areas - including the newly created Lodge Park and the Golf Course - are used for open space/recreation, but enjoy no legal protection as such. The Town should consider taking some action to protect these areas as open space/recreation, whether by establishing a special zoning classification to protect open space, by placing conservation restrictions on them, or by some other measure.

The Open Space Committee conducted an inventory of open space, recreation land, town-owned land and privately-owned land in a natural state. There are a few areas, now privately owned, which may be appropriate for permanent protection as open space. The Committee will explore this option with the property owners.

Management

To date, the management of the Town's open space/recreation areas has fallen onto the shoulders of the overburdened Department of Public Works. With the formation of an Open Space Committee, a more thoughtful, coordinated management approach will be developed. The Open Space Committee will assume a leadership role in developing and implementing management plans for the Town's open space areas. One of the Open Space Committee's top priorities will be working with the Conservation Commission and the Department of Public Works to develop management plans for Nahant's open spaces.

Other Needs

As the population increases (in surrounding towns, if not in Nahant, itself), pressure on open space recreation opportunities will also increase. Open space recreation opportunities must be improved. New trails could be built, and traditional rights of way could be re-opened. Appreciation for Nahant's Open Spaces could be increased by developing an Open Space brochure (see Support Documentation: Nahant Open Space Brochure draft) and conducting nature walks and talks.

One of the biggest threats to open space recreation in Nahant is the sewage outfall pipe now proposed by the Massachusetts Water Resources Authority. The proposed outfall would be the largest sewer outfall in the world - larger in diameter than the Callahan tunnel. It would carry sewage from the 43 communities served by the MWRA (of which Nahant is not one) to a site as close as three miles offshore, within the tidal reach of Nahant. According to the current MWRA schedule, the outfall pipe would be finished in 1994, but the secondary treatment plant would not be completed until 1999. In other words, at best, minimally treated sewage would be released for at least five years. The Open Space Committee must work with SWIM to prevent Nahant's beaches from being ruined.

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NPT00913

V. GOALS AND OBJECTIVES

I. GOAL: Protect open space and plant and animal habitats.
1. Identify open space and plant and animal habitats.
2. Inform landowners of conservation restrictions (deed restrictions that can be used to protect open space).
3. Review town-owned land that may be appropriate for conservation restrictions with Board of Selectmen.
4. Investigate special zoning measures to protect open space.
5. Recommend sites for acquisition and apply for funding.

II. GOAL: Integrate recreation and conservation activities.
1. Create path through Lowlands conservation area.
2. Work with boards/committees to create a new path network from Little Nahant through Lowlands to Bailey's Hill.

III. GOAL: Improve opportunities for open space recreation.
1. Develop a passive recreation plan at East Point.
2. Assess keeping peripheral paths open.

IV. GOAL: Protect beach and water quality and improve access to coast.
1. Continue liaison with Conservation Commission and encourage the vigorous enforcement of the Wetlands Protection Act.
2. Work with Department of Public Works to protect water quality and safety of beaches.
3. Lend support to SWIM and other organizations working against ocean dumping and pollution.
4. Inventory town rights of way and consider opening, as appropriate.

V. GOAL: Make good use of conservation and recreation lands through effective management.
1. Develop open space management plans.
2. Coordinate activities with committtees/groups that deal with open space/recreation issues (Conservation Commission, Recreation, Golf Course, Advisory and Finance, Planning Board, Beautification, SWIM, etc.).
3. Consider state mandates that affect open space (i.e., affordable housing, dump sites, etc).
4. Provide a forum for townspeople to voice their concerns about open space.
5. Encourage volunteers to participate in open space management.

VI. GOAL: Increase appreciation of Nahant's Open Space.
1. Develop open space/recreation brochure.
2. Conduct nature walks and talks.
3. Develop self-guided natural history trail.

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NAHANT OPEN SPACE SURVEY REPORT

Narrative

The Nahant Open Space Committee distributed 200 surveys at a Special Town Meeting, December 5, 1988.

In all, 70 surveys were returned, or 35%. While this is an excellent response rate, the respondents cannot necessarily be regarded as a representative sample of town residents, if only by virtue of the fact that they assembled for a special purpose. They were almost equally divided between men and women (32 -33). 3% were in their 20s; 28% in their 30s and the same percent in their 40s; 14% in their 50s; 13% in their 60s, and one person was over 80. 27% lived in town less than 10 years; 20% lived here between 11 and 20 years; 14% between 21 and 30; 11% between 31 and 40; 17% between 41 and 50 years, and 10% over 61 years. Not all respondents answered all questions.

74% indicated excellent or good applied to how well their needs for open space were met in Nahant, while 26% indicated between fair and poor. 95% felt that all 4 reasons offered were important reasons for keeping land as open space. 92% felt that more emphasis should be placed on protecting open space, 85% on environmental conservation, 84% on access to water/shoreline, 83% on access to peripheral path, 80% on management of existing open areas as well as on rights of ways, 79% on more protection of aesthetic quality. East Point and the beaches were the places 90% said they visited often, while only 39% and 43% respectively visited the Audubon Thicket and Swallows Cave often. The others indicated they rarely or never did. 2/3s visited Marjoram Park often, and 1/2 visited Baileys Hill often.

Of activities engaged in often or at times, the 5 most popular were: walking (100%), ocean watching (93%), swimming (86%), birdwatching/nature study (75%), and recreational driving (75%). Rated as rarely or never: windsurfing (69%), soccer (65%), softball (60%), golfing (56%), and tennis (55%). Given that 69% in this sample were in their 40s or older, these preferences are not surprising.

Priorities the town should give to improving selected open spaces are generally in keeping with preferred activities in the following order: conservation areas, walking paths, swimming, bicycle/jogging paths, bird watching/nature study areas, and multi-use of golf course.

In summary, 70% of respondents filled out the survey entirely or mostly. They represented an older population than may be true of the town as a whole. 80% or more placed emphasis on land protection, conservation and access. Preferences tended towards passive rather than active open space uses.

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EXHIBIT 2

NAHANT OPEN SPACE AND RECREATION PLAN 2000

(FINAL VERSION—REVISED APRIL 2001)

Prepared by the

Nahant Open Space Management and Land Acquisition Committee

Linda Pivacek, Chair
Deborah Aliff
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Sherry V. Smith
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Nahant, Massachusetts
Nahant Open Space Management and Land Acquisition Committee
2001



NPT00719

passive-recreation uses. This large project resulted in a restored walkway, park benches, new lighting, grassy areas, and a new seawall—and it now offers the potential for linkage to a new Nahant trail to include Lynn Beach, Nahant Beach, Short Beach, the Lowlands ("The Meadows"), and Bailey's Hill. This kind of project would require the cooperation of Nahant, Lynn, and the Metropolitan District Commission, which manages Lynn Beach and Nahant Beach together as "Long Beach Reservation." It would also complement similar regional outdoor recreational projects such as the East Boston Greenway.

Nahant should participate in the open space planning for the larger region. The Town is a member of the Inner Core Committee, consisting of eight Metropolitan Area Planning Council subregions, which provides a forum for the discussion of open space issues and opportunities.

Nahant's neighbors also include those communities that share its coastline. SWIM (Safer Waters in Massachusetts) is a local advocacy group based in Nahant that works with the Town and the surrounding communities to protect wildlife resources and the marine environment.

B. *History*

Native American artifacts have been found on Nahant, indicating at least a summer community here. The group that settled the peninsula probably belonged to the Naumkeags, part of the Pawtucket group (also known as Pennacook), who were known to have lived along the coast from Massachusetts Bay to York Village, Maine, hunting, fishing, and collecting plants and shellfish (see **Appendix 3**, **Map 2**: "Nahant as It May Have Been in the Seventeenth Century").

Until 1853 Nahant was part of Lynn, which was settled by Puritan farmers in 1629 and incorporated as a town in 1631. While Salem to the north and Boston to the south became world trading centers, attracting wealthy merchants, Lynn was an agricultural town through the early 1800s. Lynn farmers used Nahant as a pasture for domestic animals. By the time of the American Revolution, there were three Quaker families living on Nahant, fishing, farming, and making shoes to sell. Since ownership required that lots were to be cleared of wood in six years, Nahant lost its woodlands at an early date.

Nahant's natural beauty shaped its future. The beaches, rugged rocks, fishing, and tide pools as well as the kind hospitality of the residents began to attract visitors. Steamboat service from Boston started in 1817. By 1820, Bostonians and others began to summer in Nahant, and 1823 saw the opening of the Nahant Hotel at East Point. Stage service from the Nahant Hotel to Boston and Salem started in 1826. This was the beginning of the era of Nahant as a resort town, with the resort facilities centered initially at East Point. The civic and commercial buildings were concentrated in the center of Big Nahant along with the homes of some of the permanent residents. The western part of Big Nahant remained mostly undeveloped.

The year-round population grew from 197 in 1847 to 270 in 1855. In 1865 there were 313 residents. Some residents farmed while others fished for cod, mackerel, haddock, and halibut. The lobster industry began in 1858, and survived after the fishing industry died out with the introduction of trawlers. Several ocean-going vessels were built in Nahant. The first, a schooner, was launched in 1858. A few Nahant families made shoes on consignment for Lynn manufacturers. The construction industry was an important source of income for Nahant residents from the 1860s to the early part of the twentieth century. The resort industry, however, was the most significant contributor to the Nahant economy.

When the growing temperance movement threatened the summer resort trade in 1853, Nahant became a separate town, leaving Lynn and its Temperance Society behind. By the 1860s the western part of Big Nahant became the center of a working-class entertainment area. Nahant was to grow into the most massive hotel complex on the Atlantic Coast.

The various districts in Nahant came to be clearly delineated. Toward the east was a Boston summer community of rich merchant families and intellectuals. There were several large estates, including the home of Senator Henry Cabot Lodge and his family at East Point, on the former site of the Nahant Hotel, which burned in 1861. The civic and commercial buildings were clustered on Nahant Road. There was a large saltwater marsh called The Meadows, which separated Bass Point from the main part of town. In the center of The Meadows was Bear Pond. The Bass Point area to the West of the marsh catered to working-class visitors. Bass Point contained several hotels, seafood restaurants, and entertainment facilities, including a roller-skating rink, bandstand, shooting gallery, bowling alley, theater, and roller coaster (also known as the "scenic railway").

In 1880 the environmental pressures of this influx of people led to an outbreak of typhoid fever. As part of the remedy, the marsh was drained. In 1905 the Nahant and Lynn Street Railway broke ground, laying track alongside the causeway, with a trestle across what was left of the marsh to the intersection of Flash and Spring Roads. From there, one spur went on to the Relay Yard at Bass Point and another traveled to Tudor Wharf via Wharf Street. There was probably extensive filling of The Meadows at this time (see **Appendix 3, Map 3**: "Nahant [ca. 1914]"). The resident population was 475 in 1870 but had increased by 192 percent to 1,387 in 1915. By the 1900s, Bass Point became the focus of visitors, with as many as 40,000 arriving on weekends to visit the entertainment area. In the western part of Big Nahant as well as Little Nahant there were small, tightly clustered cottages—the development pattern that remains today.

A combination of factors brought an end to the resort era in Nahant. When the United States entered World War I, the steamers bringing people to Nahant were taken over by the military, and this service stopped. Later, the Great Depression made the large estates impractical, and prohibition cut into the resort industry. The hotels and entertainment areas at Bass Point were torn down, and the large estates in the eastern portion of the Town were sold off and subdivided.

Two large areas of open space in beautiful ocean settings, East Point and Bailey's Hill, would have been developed were it not for the protection of these areas for their military value. Starting in 1886, portions of Nahant had been set aside for gun emplacements. The military drastically altered these landscapes to conceal the guns behind man-made hills. Although the last military occupation was in 1962, the Army remained involved, gradually removing some of the gear and hazardous materials.

East Point, first the site of the Nahant Hotel, then the estate of Henry Cabot Lodge, and finally a military base, belongs partly to Northeastern University and partly to the Town of Nahant. After the closing of the military base, the missile silos at East Point were gradually filled with a variety of materials and topped with landfill, including asphalt and cement, resulting in an unsightly public hazard. Immediately following its formation in 1988, the Open Space Committee sponsored the rehabilitation of this area, now known as Henry Cabot Lodge, Jr., Memorial Park. The rehabilitation process was completed in 1997. The Park is 361,548 square feet in area. Northeastern University owns 889,495 square feet at East Point, where it maintains a marine biology laboratory and research station.

The central lowland meadows are bordered by uplands, with scattered hills of less than five hundred feet in height. These include Little Nahant, Bass Point, Bailey's Hill, East Point, John's Peril, and the hillside overlooking Forty Steps Beach. Several of these hills have land sloping down to the sea.

The exposed cliffs at Little Nahant, John's Peril, Hood's Point, Castle Rock, East Point, Bailey's Hill, and other coastal sites present dramatic rock formations. East Point, one of the highest land elevations in Nahant, is a windswept grassy promontory offering an unrestricted view of the Boston skyline to the southwest and the expanse of open ocean to the east.

The island setting and its location on the Atlantic flyway for migrating birds make Nahant an important resting and feeding spot for both landbirds and shorebirds. The need to protect the shoreline and the remaining wooded thickets, fields, and meadows is clear.

Although the Town is developed, there is very little commercial property, and housing consists primarily of single-family dwellings. There are no traffic lights in Nahant, and the Town Hall and Public Library constitute the "town center."

C. *Water Resources*

1. Drainage

There are no aquifer recharge areas in Nahant. Drainage occurs in subsurface patterns throughout the Town. Surface runoff and marshland drainage are present in the areas north and east of Nahant Harbor.

2. Freshwater Resources

There are no significant bodies of fresh water in Nahant. Bear Pond is located on the southern extreme of the central lowland meadows. Historically a coastal lagoon, it is now a series of small ponds within the Town-owned golf course. The ponds and surrounding lowlands are a significant recreational space and important to migrating birds as well. This area, which had already been radically altered through the years, was in danger of further destruction when it fell into the hands of a developer in 1988. Recognizing this area as an important resource, the citizens of Nahant had the foresight to purchase this property. This is the largest piece of open space in Nahant including fifty acres of wetlands (see **Appendix 3, Map 6**: "Nahant Wetlands"). The Open Space Committee and other conservation-minded citizens are committed to keeping as open space the remaining lowland meadows contiguous with the golf course.

3. Saltwater Resources

The coastal waters of Nahant include Nahant Bay, Massachusetts Bay, and Broad Sound. These waters support commercial and recreational fishing and boating. Nahant Beach, Short Beach, and Tudor Beach as well as the many coves are used for bathing. The Metropolitan District Commission manages Nahant Beach. There is extensive public parking and the beach is frequented by both local and regional visitors.

The highest standards of quality must be sought for the coastal waters, which are perhaps Nahant's most important resource. These waters have been subjected to contamination from commercial sources as well as sewage. The future quality of our shores will depend on vigilance and thoughtful planning.

seaside goldenrod, water horehound (*Lycopus americanus*), beach pea, *Phragmites*, beach plum (a large stand at Hood's Point), native wild rose, and yarrow.

Historically, and up until the generation that came of age in the 1960s and 1970s, this path was well used and was an important area for recreational walking and sightseeing.

(f) ***Forty Steps Beach***, historically known as Bass Beach (1.4 acres) (site no. **23**), is a sand and cobblestone beach at the foot of a steep hill, between Hood's Point and Castle Rock. The periodically repaired wooden stairs that lead down to the beach from Nahant Road are all that remain of a stairway and boardwalk, the latter having once extended out to Hood's Point. A number of severe storms since the 1950s have necessitated the construction of a jersey barrier at the upper margin of the cobblestones and extensive filling and resculpting of the hillside above.

There is a stand of *Phragmites* at one corner of the beach, but the dominant vegetation is short grass, on the hillside, which is being overtaken by small trees and shrubs, especially staghorn sumac. Plants here in recent years have included asters, hedge bindweed (*Convolvulus sepium*), crabapple, coltsfoot, oxeye daisy, Jerusalem artichoke, hawkweed, black knapweed, motherwort, common mullein, oak, beach pea, *Phragmites*, beach plum, pokeweed, privet, and staghorn sumac. Once present but not noted since the storms of the early 1990s: common elder (*Sambucus canadensis*), water horehound, horsetail (*Equisetum* sp.), soapwort/bouncing bet (*Saponaria officinalis*), and swamp candles (*Lysimachia terrestris*)—most of these located near the *Phragmites* in a "miniature wetland" below the intersection of Nahant Road and Cliff Street.

Forty Steps Beach has been historically, and is today, a well-used bathing and sunbathing beach in summer, and is popular for viewing the scenery year-round.

(g) The area from ***Castle Rock to Canoe Beach*** (site no. **21**), along the seaward edge of Nahant Road, was amended with rock fill in 1998, and some of the plants that had been encroaching on the roadside have been cleared back, but in recent years, on or about the fences that have lined the road, there have been (and in some cases still persist) dyer's greenweed, matrimony vine (*Lycium* sp.), poison ivy, native wild rose, rugose rose, staghorn sumac, and the native trumpet creeper (*Campsis radicans*). On or about Canoe Beach itself may be seen seaside goldenrod (which does not cause the allergy known as "hay fever"), ragweed (which can), and wild radish.

(h) ***East Point*** (8.3 acres) (site no. **3**) could, all by itself, be the subject of an interesting historical study. Since the nineteenth century it has been the site of a major resort hotel, summer "cottages" and estates (including the estate of the senior Henry Cabot Lodge), and a U.S. Army Nike missile base, complete with underground bunkers and missile launching silos. Today, a good portion of East Point (including some of the underground bunkers) is occupied by the Northeastern University Marine Science Center (site no. **12**), which maintains much of the land as an undeveloped ecological study area. A winding, paved right-of-way leads up a hill to the Henry Cabot Lodge, Jr., Memorial Park, which occupies the former site of the Nike missile launching pad. A small section of this public park is reserved for formal monuments to Ambassador Lodge and to former Governor of Massachusetts and Ambassador to Italy John A. Volpe, who resided in Nahant during his last years. In the mid-1990s this section was transformed from a deteriorating paved "flattop" into a sculpted rolling meadow utilizing glacial till from the Deer Island outfall pipe construction project and covered with loam. Outside the path and fence circling the meadow, the hillside descends to rugged and picturesque rock ledges.

Residents and visitors come to the site regularly for walking, jogging, birdwatching, and viewing the magnificent scenery—the "passive recreation" for which this area is now being maintained, and for which a specific *Management Plan* was created by the Open Space Committee in 1998 (see **Appendix 1**).

In botanical terms, East Point could be described as typical of a "disturbed area"—an area where much of the natural vegetation has long since given way to human intrusions and then to the adventitious plants that typically arrive when formal human intervention wanes. Northeastern University maintains a spacious, well-kept lawn around its buildings, but from the lawn to the top of the hills covering the old bunkers, the land has become a "battleground" where introduced locust trees and native staghorn sumac compete for supremacy with exotic shrubs like Asiatic/Oriental bittersweet and multiflora rose; this competition is beginning to engulf what may be the remaining legacy of the old estate gardeners: some of the black locust trees, two rows of rose acacia bushes on the access road, and at least two kinds of cultivated rose.

A variety of trees and shrubs can be found on the westerly (more-or-less inland) portions of the hillsides here, including black/rum cherry, crabapple, elm, oleaster/autumn olive (*Elaeagnus umbellata*), and pine. Circling the boundary of Lodge Park at the top one can find in abundance poison ivy, a native wild rose, rugose rose, staghorn sumac, and, tucked among the rock crevices overlooking the ocean, a few hardy stands of bayberry. Scarlet pimpernel (mentioned by Tracy in 1858) also flourishes in the rocks.

In the 1980s and 1990s, many herbaceous plants were seen along the public access road, at the top, and on the ocean-facing periphery of East Point, including asters (among them New England aster), black-eyed Susan, chickweed, several kinds of clover, wild cucumber, dock, dyer's greenweed, daisy fleabane, goldenrods (including seaside goldenrod), hawkweed, everlasting pea, common milkweed, common mullein, pearly everlasting (*Antennaria* sp.), Deptford pink, pokeweed, Queen Anne's lace, yellow rocket, common St. John'swort, snapdragon ("butter-and-eggs"), yellow stonecrop, tansy, (bull) thistle, toadflax, wormwoods (*Artemisia* spp.), and yarrow. Some species, especially the succession-type "weeds," have declined or not been seen since the installation of the new meadow. But there are also plants in the vicinity that manage to maintain a tenuous hold (e.g., a small but tenacious stand of narrow-leaved cattail [*Typha angustifolia*] growing in puddles in the rock ledges).

East Point is a vital resource, both as a natural habitat for wild plants and migrating birds and as a passive recreational area for all the Townspeople. A continuing problem here is the failure by many (non-resident) visitors to stay within the clearly marked public right-of-way.

(i) The ***Massachusetts Audubon Sanctuary*** (4 acres) (site no. **32**) was originally established by the Audubon Society as the "Maple Swamp Wildlife Sanctuary" but today is popularly known as "the Sanctuary" or "The Thicket." It occupies a tiny wetland area facing Willow Road at Curlew Beach. The red or swamp maple trees on the inland side give way to an open portion dominated now by *Phragmites* (some Townspeople over age fifty as of this writing may remember a time when this open portion used to be a more wooded area containing a pond). A scattering of native wild rose may still grow in the tangled open area beyond the tall grass. Between the red maple woods and the tall grass is a line of shadbush/Juneberry (*Amelanchier* sp.), which becomes quite visible in early spring when their white blossoms appear against the leafless background. Other trees include elm, other species of maple and oak, and at least one magnolia. The understory at this writing also includes greenbriar, matrimony vine, poison ivy, and possibly still some sweet

Birds constitute the most significant wildlife of Nahant. The beaches and mudflats are a critical habitat for gulls, terns, and shorebirds. In winter, the waters surrounding Nahant support most of the species common to New England including gulls, loons, grebes, cormorants, ducks, and geese. Many of the common breeding birds of Massachusetts nest in Nahant, but it is more important for migrating birds. Known as a "migrant trap" due to its strategic ocean location on the Atlantic flyway, Nahant is an important resting and staging area (Drury 1969). During spring and fall, the variety and numbers of passerines is impressive, and the numbers of shorebirds can be in the thousands. During the spring of 1983, for example, a research effort conducted by two nonprofit organizations, the Massachusetts Audubon Society and Bird Observer of Eastern Massachusetts, recorded seventy-six species of landbirds in Nahant including twenty-two species of warblers. This plentiful and diverse birdlife constitutes an important dimension of the natural environment in Nahant. (See **Appendix 5**, "Birds of Nahant" and "List of Endangered, Threatened, and Special Concern Bird Species Occurring in Nahant.")

The rocky and sandy shores, mudflats, salt marshes, and eelgrass beds support a variety of crustaceans, sea worms, and larvae of marine organisms.

F. *Scenic Resources and Unique Environments*

1. Scenic Landscapes

Despite its small size, Nahant is blessed with abundant scenic resources and unique environments (see **Appendix 3**, **Map 7**: "Map of Nahant Past and Present"). **East Point**, at the eastern extremity of the peninsula, is, despite its small area, a scenic gem with its steep cliffs and its spectacular view north to Marblehead and Cape Ann and south to Boston, Hull, and beyond. At **Bailey's Hill**, another prominent high point of land overlooking the ocean, vegetation has been allowed to revert to a more natural state, except for a paved path to the top of the hill. In the open field at the base of the hill is a gazebo that is used for summer concerts.

The small and picturesque **Nahant Harbor** is ideally situated in a sheltered cove. The harbor supports a fleet of sailboats and a program of instruction in the art of sailing for Nahant youth and adults. Yacht racing has a long tradition in Nahant, with regattas sponsored by the Nahant Dory Club having been established around 1894.

The Nahant Open Space Committee has planned a **walking/biking trail system** through the central lowland meadows to Bailey's Hill. The trail is expected to connect Little Nahant and Big Nahant and include a path for recreational walking in a natural setting. This proposal has received enthusiastic support from citizens and Town officials.

The Town-owned **golf course** provides a more directed recreational opportunity. The largest inland open space in Nahant, the golf course represents a successful effort by Nahant citizens and officials to save this wetland from further development.

Nahant is fortunate to be the home of the **Northeastern University Marine Science Center**, located at East Point. Through their research on the surrounding ocean and the life that it supports, the scientists working at the Center have made the offshore waters of Nahant one of the most thoroughly studied marine environments in Massachusetts. The Center's laboratory is a local, regional, and national asset.

SECTION 7. ANALYSIS OF NEEDS

A. *Summary of Resource Protection Needs*

An alarming trend documented in this report is that the number of dwelling units is increasing even though the population of Nahant is declining. As the smallest town in the Commonwealth, with an area of little more than one square mile, Nahant can ill afford to miss any further opportunities to protect open space. This is why the protection of existing resources is the single most compelling issue facing planning for open space.

Although about one third of the Town is in public or institutional ownership, it is unknown how much of this area can legally be developed. This report documents the fact that encroachment on "unbuildable" land in Nahant has taken place continuously in recent decades. Specifically, deeds to a number of public or institutional properties need to be examined to see if these parcels have any protection as open space. The Metropolitan Area Planning Council's "MetroPlan 2000: The Regional Development Plan for Metropolitan Boston" includes a "Land Resources Matrix," which provides an exhaustive listing of specific programs, funding sources, and regulatory/legislative mechanisms that can be utilized for the protection of several designated kinds of conservation areas relevant to Nahant, including the following: flood plains, shellfish beds, dunes, historic resources, archaeological resources, coastal areas, scenic landscapes, wet lands, barrier beaches, wetland habitats, rights of way, and lands of conservation and recreational interest (Metropolitan Area Planning Council 1994:65-66). Using this matrix as a guide, appropriate strategies for the protection of these resources need to be explored.

Privately held land should also figure into the planning process. A moratorium on subdivisions could be considered by the Town as there are many large lots that can be subdivided under the current Zoning Bylaws. Private owners could be approached to explore the possibility of agreeing to conservation restrictions and to discuss other methods to protect their land from future development. Identifying appropriate private parcels of open space that might be available for acquisition and finding potential sources of funds for purchasing private land could also be examined.

B. *Summary of the Community's Needs*

Although Nahant Beach, Short Beach, Bailey's Hill, Forty Steps Beach, and Lodge Park are all heavily used for recreation, there are some areas of Nahant with rich potential that are currently underused.

One of these is the area originally known as The Meadows (now, more commonly, the Lowlands), an area that is presently used for a ballfield, lobster-trap storage, and Town composting. Originally a wetland habitat, The Meadows has been drained and filled over the years to accommodate a variety of uses. Historically, trolley tracks ran through the area, and later it was used as a dump. It is still an important habitat for birds since it has wet ditches, thick cover, and food sources. The 1989 *Nahant Open Space Plan* specified as a goal the creation of a path through The Meadows, linking it with other recreational areas. The 1999 Nahant Open Space Committee Survey indicates that new recreational paths are still an important goal for the Town. Considerable work has been done on a plan for a walking and biking trail system linking The Meadows with Little Nahant, Short Beach, the golf course, and Bailey's Hill. It is hoped that

STATEMENT OF PURPOSE

The natural beauty of East Point, with its commanding ocean view, enhances the quality of life for the residents of the Town of Nahant while providing a habitat for wildlife. In writing this Management Plan for Henry Cabot Lodge, Jr., Memorial Park, the goal of the Nahant Open Space Management and Land Acquisition Committee (the "Open Space Committee") is to create a working document to ensure a unity of purpose among the members of the Open Space Committee, the Board of Selectmen, the Town Administrator, the Department of Public Works, and other official Town bodies for the future of this park. The rehabilitation of this area was the result of the efforts of many contributors, including volunteers and Town bodies and officials. The Open Space Committee spearheaded many of these efforts and continues its stewardship of the park today. The committee anticipates that it will continue to play a key role in the management of Lodge Park.

HISTORY

In 1986 an article was passed at the annual Town Meeting to create Henry Cabot Lodge, Jr., Memorial Park.

The Open Space Committee and the Conservation Commission of the Town of Nahant worked with Moriece and Gary Landscape Architects to design a landscaping plan for Lodge Park. This plan was accepted at Town Meeting in 1990, establishing Lodge Park as a passive recreation area. The goal of the plan was to restore East Point to a place of natural beauty and at the same time to preserve it as a historical landmark. The unsightly and hazardous silos of the former U.S. Army missile base were filled, and the hilltop where the silos had been located was contoured and planted to blend with the natural topography.

EXHIBIT 3

NAHANT OPEN SPACE AND RECREATION PLAN

2008



Bailey's Hill Photo: Clark Quin

Prepared by the

Nahant Open Space Management and Land Acquisition Committee

Deborah Aliff	**Linda Pivacek, Chair**
John I. Benson	**Sherry V. Smith**
Priscilla Fitch	**Julie Stoller**

Nahant, Massachusetts

Nahant Open Space Management and Land Acquisition Committee

September 2008



School; and the converted Valley Road School Building, which houses community space for the Council on Aging, the Boy Scouts, the Nahant Historical Society, and several private businesses.

Current zoning does not allow for future business development in Nahant. The new Master plan should specify that no further business development is planned for the Town.

Nahant does not have a maximum build-out plan. There are very few unbuildable lots in the Town for two primary reasons. First, houses can be built in flood zones and wetlands or on ledge as long as the building code and zoning bylaws are followed. Second, there is town-wide water and sewer distribution. Although current zoning does not allow for multi-family dwellings, a number of such buildings presently exist that have either been officially recognized or could be recognized in the future.

As of February 1, 2005, the Nahant Planning Board endorsed a new lot subdivision (2.6 acres) on Cary Street. The Cary Street subdivision includes a new building lot and one existing lot containing a single-family house. A second new three-lot subdivision (1.8 acres) was approved on Nahant Road by Forty Steps Beach. The Nahant Road subdivision includes two new building lots and one existing lot containing a single-family house. Given the continued real estate boom, the Nahant Planning Board expects future subdivisions to come before the Board. There are many other smaller lot subdivisions in Nahant that have been approved over the past few years that are being rapidly developed in Little and Big Nahant.

There are also many other larger lots around the Town that can be subdivided under the current Zoning Bylaws unless a moratorium is imposed by the Town. Presently the zoning law for some areas (R-2) permits subdivisions of existing lots into 10,000-square-foot lots, while the zoning law for other areas (R-1) permits subdivisions of existing lots into 30,000-square-foot lots (see Appendix 3, Map 4: "Official Zoning Map of the Town of Nahant"). There are a number of large new homes that have been built on small lots in the last five years, a pattern that increases concerns about density.

In addition to a moratorium, conservation restrictions would help to increase the protections for open space in Nahant and help with the problem of density. The Nahant Open Space Committee sponsored a conservation restriction workshop to acquaint town residents with the facts about conservation restrictions including tax advantages, the benefits to the town, and the benefits to the individual landowner. Of particular concern is the need for buffer areas for land that is already protected such as the areas surrounding East Point, Bailey's Hill, the Heritage Trail, the Lowlands, the Thicket, and the golf course.

EXHIBIT 4



Town of Nahant
Open Space and Recreation Plan

2022-2029

Acknowledgements

This plan would not have been possible without the support and leadership of many people in the Town of Nahant. Professional support was provided by the Metropolitan Area Planning Council (MAPC), the regional planning agency serving the 101 cities and towns of Metropolitan Boston. Funding for this project was provided by MAPC's Technical Assistance Program and the Town of Nahant.

Town of Nahant

Antonio Barletta, Nahant Town Administrator
Board of Selectmen

Nahant Open Space and Recreation Plan Committee

Paula Devereaux, Chair
Nancy Cantelmo, Clerk
Ellen Antrim
Rebecca Durgin
Trish Aldrich

Project Team

Courtney Lewis, Regional Land Use Planner II and Project Manager, MAPC
Ralph Willmer, FAICP, Technical Assistance Program (TAP) Manager and Principal Planner, MAPC
Christian Brandt, Planner & Community Engagement Manager, MAPC

Metropolitan Area Planning Council Officers

Erin Wortman, President
Adam Chapdelaine, Vice President
Sandra Hackman, Secretary
Sam Seidel, Treasurer
Marc D. Draisen, Executive Director

Unique Natural Resources

East Point Meadow

East Point is a vital resource, both as a natural habitat for wild plants and migrating birds and as a passive recreational area for the community. A significant wildflower meadow is located at the center of the park. Monarch butterflies, various bee species and other pollinators are found in this area where milkweed and wildflowers grow in abundance.

East Point Maritime Shrubland

Maritime Shrubland communities occur along the coast within the area of direct influence of the ocean and salt spray. The rocky headlands that surround East Point are defined as Maritime Shrubland. These vegetative areas often have dense patches of shrubs, up to about 10 ft. tall, with various species dominating in different areas. Black cherry, beach plum, chokeberry, lowbush blueberry, and bearberry may be abundant. Catbrier and poison ivy often cover other plants or grow in dense patches on their own. Non-native species are often abundant including Oriental bittersweet and Morrow's honeysuckle. Maritime Shrub thickets provide important nesting areas for many bird species.[11]

Eel Grass Beds

Seagrass beds are critical wetlands components of shallow marine ecosystems along the Massachusetts coastline. Seagrass beds absorb nutrients, stabilize sediments, and provide food and cover for a great variety of commercially and recreationally important fauna and their prey. Seagrasses are often referred to as "Submerged Aquatic Vegetation" or SAV. In Massachusetts, the dominant SAV is Zostera marina or eelgrass. Eelgrass is home to both economically important species, such as American lobster and winter flounder Eelgrass beds are currently growing offshore, east of Nahant in Lynn Harbor.[12] Although not indicated on recent maps due to an oversight, the southern coast of Nahant continues to support Eelgrass from Dorothy's Cove, Curlew Beach and the Joseph's Beach cove.[13]

Mapping Projects

In partnership with the Nature Conservancy, the Natural Heritage & Endangered Species Program produced strategic biodiversity conservation plans for every city and town in Massachusetts in 2012. *BioMap2* is designed to focus "land protection and stewardship on the areas that are most critical for ensuring the long-term persistence of rare and other native species and their habitats, exemplary natural communities, and a diversity of ecosystems."[14] The project was developed to protect the state's biodiversity in the context of global climate change.

[11] "Classification of Natural Communities of Massachusetts: Maritime Shrubland," Natural Heritage & Endangered Species Program, https://www.mass.gov/doc/maritime-shrubland/download
[12] MassDEP Eelgrass Mapping Project, https://www.mass.gov/info-details/massgis-data-massdep-eelgrass-mapping-project
[13] Per Phil Colarusso, EPA, email communication 1.5.22
[14] "BioMap2," MA EOEEA, www.mass.gov/eea/agencies/dfg/dfw/natural-heritage/land-protection-and-management/biomap2/

Section 7: Analysis of Needs

The summaries of open space and recreation needs were determined based on information from the 2008 OSRP, public input from the virtual open house, the OSRP Community survey, the virtual community forums (as described in Section 2 Introduction), and consideration by the OSRP Committee. The consolidated community input can be sorted in three broad categories of needs which are carried over into the Goals and Objectives section:

- Resource Protection Needs
- Community Needs
- Management Needs

Summary of Resource Protection Needs

Protecting Open Space

Open space and conservation lands provide the Town with a multitude of irreplaceable benefits, including wildlife habitat, walking trails, scenic vistas, and flood protection. Collectively, these benefits contribute to Nahant's character and are integrally linked to residents' quality of life. Residents of the Town value and appreciate their open space resources, and over the past several years, both public and private entities have demonstrated a commitment to conserving and protecting these resources.

Because of the Town's physical size and buildout, there are few remaining large parcels of conservation interest. There are, however, smaller sites and buffer areas that border land that is already protected that should be considered for acquisition or further protection through conservation restrictions or easement. Some of the areas that the Town should prioritize for future protection include those areas surrounding East Point, Bailey's Hill, the Heritage Trail, the Lowlands, the Nahant Thicket, and the Kelley Greens golf course.

Other areas that would benefit from permanent protection status include those areas identified as BioMap2 Core Habitat. BioMap2 Core Habitat areas are critical for the long-term persistence of rare species and other Species of Conservation Concern and contain a wide diversity of natural resource communities and intact ecosystems. In Nahant, this includes Short Beach and most of the shoreline surrounding East Point.

Impacts of Climate Change

The "2019 Nahant Community Resilience Building Workshop Summary of Findings" identifies stakeholders' highest priority concerns about local climate change impacts.[22] The top recommendations to improve resilience include:

[22] Town of Nahant Community Resilience Building Workshop Summary of Findings, 2019. https://nahant.org/wp-content/uploads/2021/07/Nahant_Final_MVP_Report_April_11_2019.pdf

- Developing a long-term coastal defense plan for the entire coastline to enhance natural ecosystems in order to reduce the vulnerability to storm damage including a living shoreline & dune management plan.
- Establishing a long-term strategy to upgrade and maintain the storm water and natural drainage systems including green infrastructure solutions to reduce inland flooding
- Reducing flood pathway impacts (e.g. at beach parking locations) by installing permeable surfaces.
- Implementing natural green infrastructure solutions for storing / removing excess water

Management of invasive species and shoreline erosion were also raised as concerns in the Summary of Findings and the OSRP survey. Approximately 81% of OSRP survey respondents felt that preserving and protecting the Town's coastal and wetland areas was a high priority.

Summary of Community's Needs

The OSRP Community survey was designed to uncover and better understand the community's open space and recreation needs. The findings of the survey are illustrated and summarized below. The survey asked respondents to rate the importance (high, medium, and low) of a variety of open space and recreation priorities, and the results are shown in ***Figure 43***

Figure 43: *Rate the importance of these priorities for Nahant's Open Space and Recreation Plan*

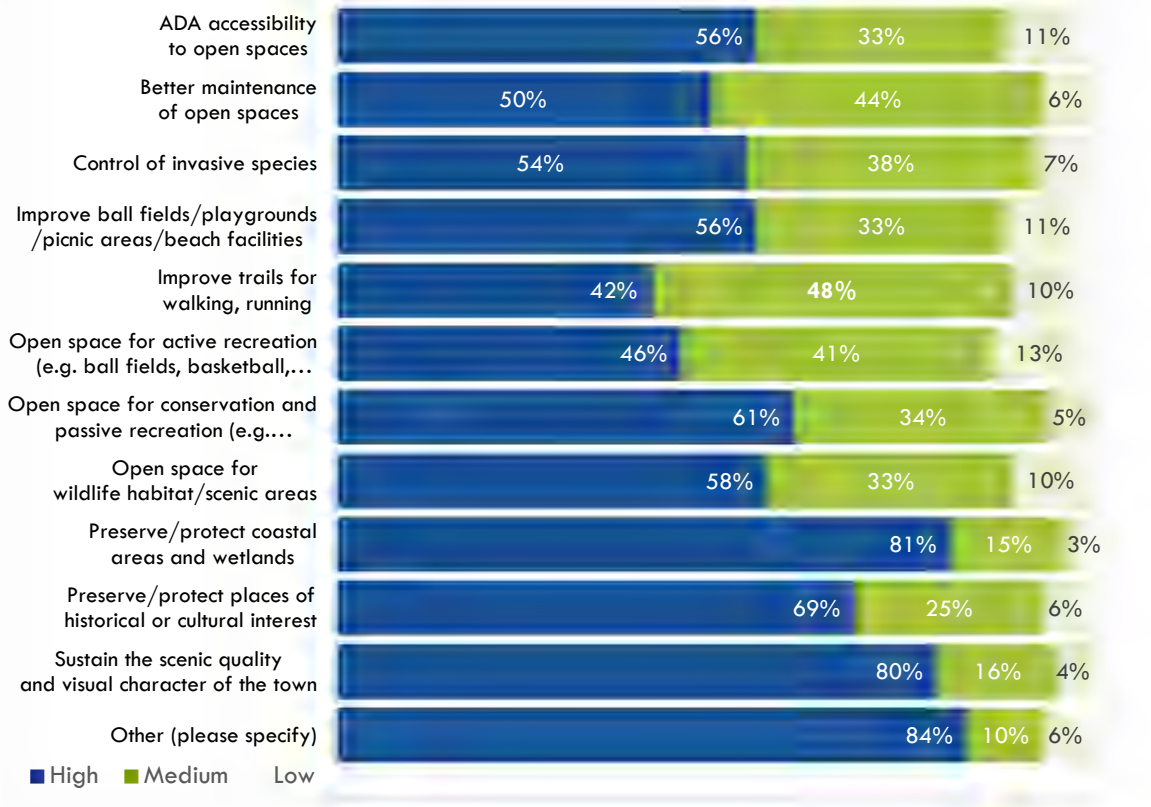


EXHIBIT 10

The Commonwealth of Massachusetts
Executive Office of Energy and Environmental Affairs
100 Cambridge Street, Suite 900
Boston, MA 02114

Charles D. Baker
GOVERNOR

Karyn E. Polito
LIEUTENANT GOVERNOR

Kathleen A. Theoharides
SECRETARY

Tel: (617) 626-1000
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http://www.mass.gov/envir

August 2, 2019

CERTIFICATE OF THE SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS
ON THE
ENVIRONMENTAL NOTIFICATION FORM

PROJECT NAME	: Northeastern University Coastal Sustainability Institute
PROJECT MUNICIPALITY	: Nahant
PROJECT WATERSHED	: North Coastal
EEA NUMBER	: 16046
PROJECT PROPONENT	: Northeastern University
DATE NOTICED IN MONITOR	: June 10, 2019

Pursuant to the Massachusetts Environmental Policy Act (M.G.L. c. 30, ss. 61-62I) and Section 11.03 of the MEPA Regulations (301 CMR 11.00), I hereby determine that this project **requires** the preparation of a mandatory Draft Environmental Impact Report (DEIR). The Proponent should submit a DEIR in accordance with the Scope included in this Certificate.

Project Description

As described in the Environmental Notification Form (ENF) and supplemental information submitted to the MEPA office on July 9, 2019, the project consists of the development of a Coastal Sustainability Institute (CSI) that will include academic, research, meeting, office space and support facilities at Northeastern University's Marine Science Center (MSC). The CSI would support an additional 114 faculty, staff and students for a total campus population of 228.

The CSI will consist of an approximately 55,000 square foot (sf) structure located on top of the Murphy Bunker, which is part of the MSC. A geothermal heating and cooling system will

More than 500 comments were received on the project, including comments from Congressman Seth Moulton, Senator Brendan Crighton and Representative Peter Capano, the Massachusetts Lobstermen Association (MLA), the Conservation Law Foundation (CLF), MassAudubon, the Nahant Preservation Trust, the Nahant Board of Selectmen, the Nahant Conservation Commission, the Nahant Historic Commission and from Nahant residents. The majority of commenters express significant concern with siting the facility on East Point, including impacts to open space, wildlife and municipal infrastructure. Comments request additional analysis of alternatives; identify inconsistencies in the ENF; and indicate that efforts to improve resiliency of Canoe Beach should be reviewed as part of the project.

Alternatives Analysis

The ENF included an alternatives analysis for multiple components of the project including the CSI, seawater intake system, parking, and building cooling. Alternatives for the CSI included a Site Location Alternative, a No-Build Alternative, and three building massing alternatives including the Preferred Alternative. The ENF indicates that an alternative site was not considered because Northeastern purchased the property to create an oceanography and teaching center and the East Point location offers a unique learning environment. Specifically, it noted the two shelving beaches on the campus and the moderate to heavy surf during storm events that provides an opportunity to study high-energy littoral phenomena. A No-Build Alternative was dismissed because existing facilities could not support identified needs of the CSI program and would not include project benefits, such as an improved stormwater management system.

Alternative building massing for the CSI include Scheme A, Scheme B (Preferred Alternative) and Scheme C. Scheme A consists of a 60,000-sf building on the east side of the Murphy Bunker. A single floor would be constructed along the north-south ridge above the bunker. Approximately 33,000 sf would be located above the bunker. The ENF indicates that the siting would minimize its visibility to the residential neighborhood to the west and landscaping would limit visibility from Lodge Park; this Alternative would be closer to the coastal buffer zone than the Preferred Alternative. Scheme C consists of a 44,000-sf building located on the east and west side of the Murphy Bunker in a similar configuration as the Preferred Alternative. Approximately 28,650 sf of the building would be above the Murphy Bunker and a second 13,000-sf building would be constructed behind the Edwards Building. This alternative would reduce the footprint of the building on top of the bunker; however, the ENF indicates that the second building would impact the residential neighborhood along Shallow Cove Rd.

The Preferred Alternative (Scheme B) would entail approximately 37,000 sf of floor area in two buildings above and to the east of the Murphy Bunker. As described in the ENF, the Preferred Alternative does not extend into the coastal buffer zone and minimizes impacts to the east meadow.

The alternatives analysis considered a parking area to the east of the Murphy Bunker outside of the wetland and coastal buffer zone. The ENF indicates that this option was dismissed because it would likely be opposed by the community.

EXHIBIT 11

The Commonwealth of Massachusetts
Executive Office of Energy and Environmental Affairs
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June 19, 2020

CERTIFICATE OF THE SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS
ON THE
FINAL ENVIRONMENTAL IMPACT REPORT

PROJECT NAME	: Northeastern University Coastal Sustainability Institute
PROJECT MUNICIPALITY	: Nahant
PROJECT WATERSHED	: North Coastal
EEA NUMBER	: 16046
PROJECT PROPONENT	: Northeastern University
DATE NOTICED IN MONITOR	: March 25, 2020

Pursuant to the Massachusetts Environmental Policy Act (MEPA, M.G. L. c. 30, ss. 61-62I) and Section 11.08 and 11.10 of the MEPA regulations (301 CMR 11.00), I have reviewed the Final Environmental Impact Report (FEIR) and hereby determine that it **adequately and properly complies** with MEPA and its implementing regulations.

While this project may now proceed to permitting, I acknowledge the numerous comments received from the Town of Nahant, residents, advocacy organizations and State Agencies throughout the course of this review. This level of public participation, together with review of the project through submission of Draft and Final Environmental Impact Reports (EIRs), have allowed for extensive disclosures of relevant environmental impacts associated with the project, including land, water/waterways, wetlands, historic resources, climate change and other related impacts. Given this record, I am satisfied that the FEIR and prior reviews have provided an adequate description and analysis of the project and its alternatives, and assessment of its potential environmental impacts and mitigation measures, so as to enable Participating Agencies to fulfill their obligations under Section 61 of M.G.L. c. 30. As indicated below, to the extent material changes are made to the project in the course of future permitting or other related developments prior to the taking of Agency Actions, including completion of archaeological

of the U.S. National Coastal Defense System in World War II. Remnant military structures, including the Murphy Bunker, were converted into a 31,083-sf research facility. The MSC includes 15,081 sf of lab/research space (Edwards Laboratory), a 1,517-sf greenhouse, a 500-sf ice house and 2,854 sf of temporary trailer space. As currently designed, the seawater intake system consists of two 6-inch diameter HDPE intake pipes that extend approximately 350 ft from the seawall into Bathing Beach Cove. Seawater is pumped to a pump house where it then flows to two 20,000-gallon storage tanks. It is gravity fed to the Edwards Lab and Murphy Bunker. After flowing through research tanks, the seawater is discharged onto Bathing Beach through a 15-inch pipe at the Bathing Beach seawall. The pipe has been identified as a source of beach erosion. The flow capacity of the intake system is 1,100 gpm; flows have averaged 291 gpm over the past year.

The project site is primarily vegetated and contains uplands and wetlands including Bordering Vegetated Wetlands (BVW), Land Subject to Coastal Storm Flowage (LSCSF), Land Under Ocean (LUO), Land Containing Shellfish (LCSF), Coastal Beach, and Coastal Bank. Previously disturbed areas associated with the bunkers, including the area above bunkers have revegetated and are primarily wooded. Site topography is variable, ranging from Mean Low Water (elevation -4.91 NAVD88) to a maximum elevation of approximately 64 feet above the Murphy Bunker. Higher elevations on the west and east sides of the Site border a central valley oriented on a north-south axis between Canoe Beach and Bathing Beach. Portions of the project site are located within a Velocity (VE) Zone with base flood elevation (BFE) of 18 ft NAVD88 along the northern portion of the property (where Canoe Beach is located); Zone AO with a ponding depth of 3 ft through the center of the property; and Zone AE with BFE of 13 ft NAVD88 and VE Zone with BFE of 17 ft NAVD88 along the southern shoreline.[2]

According to the 14th edition of the Massachusetts Natural Heritage Atlas, the project is not located within mapped *Estimated* or *Priority Habitat of Rare Species*. East Point is identified as an Important Bird Area by MassAudubon. Nahant Bay supports recreationally and commercially significant marine fisheries resources and habitats. The project site is habitat for the spawning, larval settlement and juvenile development of winter flounder (*Pseudopleuronectes americanus*). Lobster (*Homarus americanus*) are common and are commercially and recreationally fished in this area. The site provides habitat for the larval settlement and juvenile development of lobster. Several diadromous species can also be found within the project area and include alewife (*Alosa pseudoharengus*), blueback herring (*Alosa aestivalis*), American shad (*Alosa sapidissima*), rainbow smelt (*Osmerus mordax*), American eel (*Anguilla rostrata*), white perch (*Morone americana*), and Atlantic tomcod (*Microgadus tomcod*). Finally, eelgrass (*Zostera marina*) is present along the coves to the west of the site.

Prior MEPA Review

Northeastern (Proponent) submitted an ENF in January 2018 (EEA# 15793) which included only the seawater intake system. The ENF was withdrawn to address a number of issues raised by State agencies and Nahant residents, including concerns that the proposed CSI development was not included in the ENF and potential segmentation issues arising from this

[2] Based on Federal Emergency Management Agency Flood Insurance Rate Map (FIRM) Letter of Map Revision (LOMR) 18-01-0243P effective December 29, 2019 and LOMR 16-01-2425P effective July 7, 2017.

omission. The Proponent filed a new ENF on May 31, 2019 which included both the seawater system upgrade and the proposed CSI building and included additional information based on feedback received including: a reduction in the proposed operation of the seawater system (from 2,400 gpm to 600 gpm); elimination of seawater use for building heating and cooling; use of an offshore diffuser system at Bathing Beach to eliminate erosion; elimination of impacts to BVW associated with the seawater system; and addition of an onsite lobster hatchery to mitigate potential lobster larvae mortality associated with the seawater intake system. On August 2, 2019, a Certificate on the ENF requiring the preparation of a Draft and Final EIR was issued. On November 22, 2019, an NPC/DEIR was submitted by the Proponent with a request for a Phase 1 Waiver which would allow the permitting of the seawater system to move ahead prior to the completion of MEPA review. The waiver was denied and a Scope for an FEIR was issued on January 10, 2020. Among other issues, the Scope required the Proponent to continue to consider resiliency improvements at Canoe Beach to reduce flooding and improve the resiliency of the adjacent access drive to the site. A key focus of the FEIR therefore involved analysis of alternatives that could incorporate resiliency measures while assessing potential locations adjacent to this access point (albeit a low-lying area) to the site.

Environmental Impacts and Mitigation

Potential environmental impacts associated with the project include 23,759 sf[3] of LSCSF of which 6,667 will be permanent impacts; 2,038 sf of LUO (permanent) and 2,038 sf of Land Containing Shellfish (permanent). The Proponent plans to remove the existing intake lines and anchor block which will total approximately 175 sf of temporary impacts to LUO and Land Containing Shellfish. The project will result in the alteration of 4.1 acres of land[4] including the creation of 1.71 acres of new impervious surface. The project will result in the alteration of historic resources and potential alteration of archaeological resources; generation of an additional 175 new average daily trips (adt) (350 total adt for the site)[5]; increase in water demand by 1,094 gpd (2,023 gpd total); and increase in wastewater generation by 995 gpd (1,839 gpd total).[6] The project involves the installation of 0.42 miles of water main and 0.25 miles of sewer main (reduced from calculations included in previous filings). The project will generate greenhouse gas (GHG) emissions associated with energy use.

Measures proposed to avoid, minimize, and mitigate project impacts include improvements to the stormwater management system, habitat restoration (including removal of invasive species), development of a lobster hatchery, and development of a mitigation package to address impacts to municipal infrastructure. Intake and discharge pipes will be directionally drilled under the seawall and beach and will emerge just seaward of MLW to minimize disturbance to the beach and seawall. The project will include measures to reduce GHG emissions and energy use.

[3] The NPC/Certificate listed a total of 28,408 sf to LSCSF which was a calculation error was corrected in the FEIR.
[4]The Certificate on the NPC/DEIR identified 5.9 acres of new land alteration. This number included incorrectly included existing alteration as well as the proposed 4.12 acres of new alteration.
[5] The project does not exceed transportation thresholds outlined in the MEPA Regulations (301 CMR 11.03(6)) nor does it require any transportation related permits from State Agencies.
[6] E-mail correspondence received on January 9, 2020 indicated that the proposed water demand and wastewater generation are accurately reflected in the original ENF and not the NPC from.

Jurisdiction and Permitting

This project is subject to MEPA review and preparation of an ENF pursuant to 301 CMR 11.0 (3)(b)(1)(e); (3)(b)(1)(f); (3)(b)(6); and (10)(b)(1) because it requires Agency Actions and involves the alteration of ½ or more acres of any other wetland; new fill or structure or expansion of fill or structure in a velocity zone or regulatory floodway; construction, reconstruction or expansion of an existing solid fill structure of 1,000 or more sf base area or a pile supported or bottom-anchored structure of 2,000 or more sf base area provided that the structure occupies flowed tidelands or other waterways; and demolition of all or any exterior part of any historic structure listed in or located in the any historic district listed in the State Register of Historic Places or Inventory of Historic and Archaeological Assets of the Commonwealth.[7] The project requires a Chapter 91 (c. 91) License from the Massachusetts Department of Environmental Protection (MassDEP). The project has received a grant from the Office of Coastal Zone Management (CZM) and it requires Federal Consistency Review by CZM. As a discretionary EIR was required for the project, it is subject to the MEPA Greenhouse Gas (GHG) Emissions Policy and Protocol (GHG Policy).

The project requires review by the Massachusetts Historical Commission (MHC) acting as the State Historic Preservation Officer (SHPO) pursuant to Section 106 of the National Historic Preservation Act of 1966, as amended (36 CFR 800). The project will require review and approvals from the Town of Nahant, including an Order of Conditions from the Nahant Conservation Commission, or in the case of an appeal, a Superseding Order of Conditions from MassDEP. The project requires a National Pollutant Discharge Elimination System (NPDES) Remediation General Permit (RGP) and Construction General Permit (CGP) from the U.S. Environmental Protection Agency (EPA). The project may require Pre-Construction Notification under Section 10 and Section 404 from the Army Corps of Engineers (ACOE) in accordance with the General Permits for Massachusetts. The project may require Federal Consistency Review by the Office of Coastal Zone Management (CZM).

Because the project involves Financial Assistance, MEPA jurisdiction is broad and extends to all aspects of the project that are likely, directly or indirectly, to cause Damage to the Environment as defined in the MEPA regulations.

Review of the FEIR

The FEIR provided a description of existing and proposed conditions, conceptual project plans, alternatives discussion and identified measures to avoid, minimize and mitigate environmental impacts. The project will support 29,150 net new sf of academic research and teaching space, meeting spaces, office and support space. The FEIR disclosed the project site's vulnerability to coastal flooding at Canoe Beach and indicated that while the Proponent acknowledges the need to address these vulnerabilities, it does not have immediate plans to do so; the Proponent intends to undertake these efforts within the next ten years.

[7] The threshold at 301 CMR 11.03(3)(b)(1)(f) (alteration of ½ or more acres of other wetlands) was not identified in the NPC form. The threshold at 301 CMR 11.03(3)(b)(1)(a) (alteration of coastal dune, barrier beach or coastal bank) is no longer exceeded because wetlands impacts were refined from the ENF submission.

EXHIBIT 13

[NAHANT_0808]

COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS. SUPERIOR COURT DEPARTMENT OF THE TRIAL COURT

NAHANT PRESERVATION TRUST, INC., et al. Plaintiffs, v. NORTHEASTERN UNIVERSITY, Defendant.	**LEAD ACTION:** Civil Action No. 1977-cv-01211A
NORTHEASTERN UNIVERSITY, Plaintiff, v. NAHANT PRESERVATION TRUST, INC., et al. Defendants.	**CONSOLIDATED WITH:** LAND COURT DEPARTMENT OF THE TRIAL COURT CASE NO. 19 MISC 000390/Sup. Ct. Civil Action No. 1977-cv-01503

AFFIDAVIT OF LINDA PIVACEK IN OPPOSITION TO NORTHEASTERN'S MOTION FOR SUMMARY JUDGMENT ON THE TOWN OF NAHANT'S PROMISSORY ESTOPPEL CLAIM

I, Linda Pivacek, state under oath as follows:

1. I am one of twenty-seven (27) named citizen plaintiffs in the above-captioned matter. I have lived in Nahant for 50 years. I reside at 41 Little Nahant Road, Nahant, MA 01908.

34. The Open Space Committee includes Northeastern's property on the Inventory of Lands of Conservation and Recreation Interest (id., p. 541).

35. Since the 1980s, I have made countless trips to East Point. Often alone to enjoy the natural beauty. I have also led birding surveys and birding group trips: at least 24 group visits per year for more than a decade.

36. I have hosted dozens of groups of birders at East Point. I was familiar with the employees at Northeastern's Marine Science Center. They knew that we walked to Lodge Park and down into the valley and meadow. We did so freely and without restriction or the need to obtain permission. The property was simply open to all. My birding groups were even welcome to use the restroom facilities at the Center after our trips. Employees at the Marine Science Center were often aware that we were there, but not always as we did not check in with them.

37. I have personal knowledge that many members of birding groups led by me and by others that visited and enjoyed East Point, including Northeastern's property, were not Nahant residents.

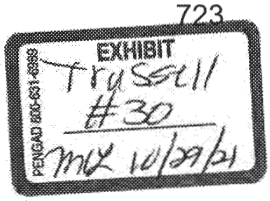
38. Attached as Exhibit A to my Affidavit in Support of Plaintiffs' Motion for Temporary Restraining Order and Motion for Preliminary Injunction, dated December 9, 2019, is Cornell University's eBird report for East Point, listing 183 species that have been observed there. The names of the observers and visitors are included. I recognize almost all of the names listed on the eBird report. All but a few are not residents of Nahant.

Signed under the penalties of perjury on the 6th day of December, 2022.

/s/ Linda Pivacek
Linda Pivacek

841088/NAHA/0008

EXHIBIT 18



East Point History

Text from UniGuide audiotour

Last updated October 14, 2017

This is an official self-guided and streamable audio tour of East Point, Nahant. It highlights the natural, cultural, and military history of the site, as well as current research and education happening at Northeastern University's Marine Science Center.

Content was developed by the Northeastern University Marine Science Center with input from the Nahant Historical Society and Nahant SWIM Inc., as well as Nahant residents Gerry Butler and Linda Pivacek.

1. Stop 1

Welcome to East Point and the Northeastern University Marine Science Center. This site, which also includes property owned and managed by the Town of Nahant, boasts rich cultural and natural histories. We hope you will enjoy the tour

Settlement in the Nahant area began about 10,000 years ago during the Paleo-Indian era. In 1614, the English explorer Captain John Smith reported: the "Mattahunts, two pleasant Iles of grouse, gardens and corn fields a league in the Sea from the Mayne." Poquanum, a Sachem of Nahant, "sold" the island several times, beginning in 1630 with Thomas Dexter, now immortalized on the town seal.

The geography of East Point includes one of the best examples of rocky intertidal habitat in the southern Gulf of Maine, and very likely the most-studied as well. This site is comprised of rocky headlands and lower areas that become exposed between high tide and low tide. This zone is easily identified by the many pools of seawater left behind as the water level drops during low tide. The unique conditions in these tidepools, and the prolific diversity of living organisms found there, are part of what interests scientists, as well as how this ecosystem will respond to warming and rising seas resulting from climate change. In addition to dozens of species of seaweed, the most common animals to inhabit these shorelines are crabs, snails, sea urchins, starfish, mussels, and soft-bodied tunicates. One can also commonly see gulls, terns, and ducks. In winter, seals occasionally bask along the beaches.

The beach you are looking out on is known as Canoe Beach, and is highly utilized for research, education, and recreation. The MSC Outreach Program educates thousands of people each year about coastal ecology in the tidepools of the rocky shore to the right, best visible at low tide.

As you look out to sea, Castle Rock is the large rock formation along the shoreline to the left. From this vantage point, visitors can enjoy a good view of the lowland below. Egg Rock, the

6. Stop 6

This point offers great views over the sea, where ocean sunfish, harbor seals, and minke whales are occasionally spotted. From October to May, rafts of waterfowl typically include white-winged, surf and black scoters, common eiders, greater scaup and common goldeneye. Visitors can often spot common and red-throated loons, and horned and red-necked grebes. Stellwagen Bank is located in Massachusetts Bay, about 27 miles east of Nahant.

John Ellerton Lodge purchased the fire-ruined Nahant Hotel property for the mortgage cost in 1861. After he died, his widow continued to stay on at the family's brick house known as "The Villa". In 1867, Lodge's daughter, Elizabeth, and her husband, George Abbott James, commissioned architect Charles Brigham to design a mansion which came to be known as "The Lowlands." Her brother, Henry Cabot Lodge, a Harvard-trained attorney who would go on to serve as a Massachusetts senator and ambassador, brought his bride, Anne Davis, to live at East Point in 1871 in a home that had also been recently built by James. The freestanding billiard room from the original Nahant Hotel, which did not burn down, was used by Henry Cabot Lodge as a library. Part of the estate is now owned by the Town of Nahant, who designated it as Lodge Park in 1988.

During the Korean War, four 90-mm anti-aircraft guns were located in the field between Battery 104 and the tip of East Point. When the Nike-Ajax missile program came into operation at Nahant in 1955, these guns were removed and three missile storage magazines were installed with below-ground storage and above-ground launcher units. The missile battery was operational through 1961 when the base was decommissioned.

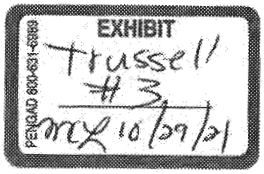
After fundraising to landscape and fill in the Nike missile silos, Nahant rededicated the park as Lodge Park in 1994. The fill that was used to cover the Nike base was material dredged during construction of the Deer Island wastewater tunnel.

7. Stop 7

The compass rose in granite indicates the orientation of the impressive scenic views, and was placed in honor of John Anthony Volpe. Over the period of 1961-1977, Volpe served various appointments, including as Governor of Massachusetts, U.S. Secretary of Transportation, and Ambassador to Italy. The meadow just beyond Lodge Memorial's formal lawn captures the biodiversity of this habitat. Among the assortment of flowering plants are clover, tansy, Queen Anne's lace, aster, and milkweed. Meadow voles inhabit this meadow while tree swallows and barn swallows hunt here for insects. Fall brings white-throated and Savannah sparrows. In winter, snow buntings, horned larks, and Lapland longspurs make their home in this windswept environment.

In 1995, a local astrophysicist installed a small solar observatory at East Point, and this is visible atop the hillside that is the vegetation-covered Murphy Bunker. It is used regularly to view sunspots and other solar magnetic structures. The telescope is housed in a 3m diameter motorized Observa-Dome provided by MIT's Lincoln Laboratory. The observatory is open to the public via appointment.

EXHIBIT 22



EF

GENERAL INSTRUCTIONS

FOR THE PREPARATION OF
APPLICATION FOR TRANSFER OF SURPLUS PROPERTY
FOR PUBLIC PARK, PUBLIC RECREATIONAL AREA AND/OR
HISTORIC MONUMENT

1. Under section 13 (h) of the Surplus Property Act of 1944, as amended, surplus real property together with improvements and equipment located thereon may be conveyed to States, political subdivisions, instrumentalities or municipalities for use as public parks, public recreational areas or as historic monuments. Property so conveyed may be for any one of the above purposes, or a combination of them.

2. One application only shall be required to be submitted by any one applicant in connection with property sought under this section at any one installation regardless of the number of proposed uses involved. However, a complete and detailed program shall be submitted as part of the application for each such separate use, together with an accurate description of the individual parcels to be utilized for the different programs. This data shall be furnished on attachment hereto entitled, "Exhibit A, Program of Utilization".

3. Applications will be prepared in an original and five copies. One complete copy will be retained by the applicant and the remainder forwarded to the General Services Administration Regional Office whose address appears on Page 1 of the application.

4. Conveyance will not be made to instrumentalities or institutions which, in the opinion of the General Services Administration, do not have the ability to finance, operate and maintain the program proposed, regardless of the need and inadequacy of existing facilities, or the historic significance of the property.

5. Surplus property will not be conveyed for park or recreational purposes except where present facilities are inadequate. It is important that definite proof of need and the degree of inadequacy of existing facilities be reflected in this application.

6. Surplus property will not be transferred for historic monument purposes if its area exceeds that necessary for the preservation and proper observation of the historic monument situated thereon, or its historical significance relates to a period of time within the fifty years immediately preceding the determination of suitability and desirability for such use by the Advisory Board on National Parks, Historic Sites, Buildings and Monuments.

7. Fee-title conveyance only shall be made of properties transferred for park, recreational or historic purposes.

R1-726
September 1961

NPT01498

EXHIBIT A OF APPLICATION DATED July 2, 1963

Program of Utilization

For Park or Recreational Use

NOTE: If additional space is required use continuation sheets, or reverse side.

(Property) Launcher Area
NIKE Ajax Site B-17 (GSA Control No.) D-Mass-601

1. Discuss briefly the suitability and adaptability of the property for the proposed use. Cite physical characteristics, accessibility and location with respect to roads and centers of population.

The property is located on the most easterly point of the Town of Nahant and affords an excellent view of Massachusetts Bay and the Atlantic Ocean. The terrain is suitable for development of picnic areas, tennis courts, soft ball and hard-ball layouts and other outdoor activities. The area is bordered by the sea on three sides and offers spectacular views of the surf and many interesting geological formations. It is easily accessible from all areas of Nahant and is serviced by good roads. It is suitable for use for study of bedrock, glacial and recent geology, and forms of marine life.

2. Discuss plans for converting the property and estimated cost thereof.

It would be the intent of the Town, over a period of years, to develop the property into a park and recreational area as outlined above. The existing buildings could be used not only by the Town sponsored groups under direction of our local recreation commission, but also for school recreational activities and could also be utilized by local youth organizations such as the Boy Scouts, Sea Scouts, Y. M. C. A., CYO and others. It is impossible to give an estimated cost of converting the property as planning is in a preliminary stage and the entire program would take a number of years to complete.

NPT01499

Nahant_80A_034022

[NAHANT_1040]

3. Specify recreational activities to be provided and population to be served.

The Town's present year-round population is approximately 4,000 people and during the summer months it is estimated at about 8,500. Estimates made by a professional planning consultant, indicate that the Town will level off at a peak year-round population of 5000 by 1970. This area would provide residents of the community with the essential open space needed for picnicking, softball, tennis and other related activities. In addition the natural beauty of the area with its excellent view of the Atlantic, make it a natural setting for a "Cliff or Nature Walk". Areas near the site have been used by geology and biology classes of Boston University, Tufts and Harvard and many private and public high schools. If the Town acquired the area such use would be encouraged.

4. Justify proposed transfer by citing proof of need and degree of inadequacy of existing facilities.

Nahant's population is confied to an area of 1.06 square miles. Most of our natural recreational area, namely Long Beach, is presently under control of the Metropolitan District Commission. Present recreational facilities, other than beaches, are limited to a baseball diamond, softball diamond, and an area of approximately two acres suitable only for sports or recreation in dry weather as it is in a swampy area. With the projected population increase, we feel that this, the last remaining open area in the Town of any appreciable size, should be preserved for recreational purposes.

NPT01500

Nahant_80A_034023

5. Discuss plans for staffing, operation and maintenance of facilities to be acquired. (A full and complete statement of legal authority and ability to finance, operate and maintain the facilities must be furnished.)

Plans for staffing operation and maintenance are presently in preliminary planning stages. The Town Meeting has full legal authority, under the Statutes of the Commonwealth of Massachusetts to provide funds for the financing, operation and maintenance of the facilities.

6. Make a full statement of the degree of unrestricted use contemplated for the property. Unrestricted use is defined as nondiscrimination as to nationality, race, sex, creed and residence, within the limitation of State laws.

The Town intends to permit unrestricted use of the property in accordance with the laws of the Commonwealth of Massachusetts, with no discrimination as to nationality, race, sex, creed and residence.

Attachments Required

7. Attach to this exhibit:

a. A statement under oath that the applicant is an instrumentality of Government and that the facilities to be acquired will be used solely for the purposes set forth in the program submitted.

b. A certification as to the authority of the signer of the application to execute this offer and to do all acts necessary to consummate the transaction.

7.

A. I hereby swear that I am the duly elected chairman of the Board of Selectmen of the Town of Nahant and that the facilities as applied for will be used solely for the purposes as set forth in the application and exhibit attached.

Charles A Kelley
Chairman, Board of Selectmen

The above oath was subscribed
and sworn to before me this
2nd day of July 1963.

Samuel Barry Cadigan
Samuel Barry Cadigan
Notary Public

(My commission expires Dec. 21, 1968)

B.

I hereby certify that as Chairman of the Board of Selectmen of the Town of Nahant, I have the authority to make application for the aforesaid property within the limits of the By-Laws of the Town of Nahant and the Statutes of the Commonwealth of Massachusetts.

Charles A Kelley
Charles A. Kelley, Chairman
BOARD OF SELECTMEN

EXHIBIT 25

TOWN OF NAHANT, MASSACHUSETTS

OFFICE OF THE

BOARD OF SELECTMEN

BOARD OF HEALTH, BOARD OF PUBLIC WELFARE

AND PUBLIC WORKS DEPARTMENT

April 28, 1965

Mr. R. W. Jones, Regional Director
Utilization & Disposal Service
General Services Administration
Boston 8, Massachusetts

Re: Launcher Area- NIKE Ajax
Site B-17
Nahant, Massachusetts
D-Mass-601

Dear Mr. Jones:

Recent news stories in the Lynn Item indicate that Northeastern University is interested in acquiring the former Nike site at Nahant for use as a marine biological laboratory. It is our understanding that if they go forward with the acquisition that the property will be turned over to them at no cost under a program sponsored by the Health, Education and Welfare Department.

As you know, the Town of Nahant elected not to purchase this area at the Annual Town Meeting in March 1964, as we felt that in addition to the initial cost of approximately $29,000 that the expense of developing, maintaining and protecting the site under the restriction that it be used for recreational and/or educational purposes, was far greater than a community the size of Nahant could possibly bear. It was our understanding that after the Town rejected the purchase of the property that it would then go on the market for a sale to private interests. Inasmuch as the area is zoned for single family construction requiring minimum lot sizes of 30,000 square feet we felt that the Town was adequately protected in any future development of the site. Further, it was our feeling, shared by responsible real estate people, that the waterfront location, the high initial cost of the land plus the expense of developing it would result in attractive and expensive type dwellings.

Although we admit to the difficulty of predicting future events we have sound reasons to feel that this area could yield a valuation of over one million dollars if developed under our present zoning. We also feel that the costs of Town services would be at a minimum and that the property could eventually return tax revenue to the Town to the extent of$3.00 to $4.00 on our current tax rate. Needless to say, in these times of an ever increasing tax burden, such a return has a great deal of attraction.

EXHIBIT
tabbies
17

NPT02177

To analyze the situation a bit further from the viewpoint of the best interests of Nahant, we would remind that this area was tax producing private property when acquired by the Federal government in 1940 or 1941. For some twenty-five years it has not produced any revenue for Nahant but has caused considerable expense to the community: to cite one example, the damage done to our roads during construction of coastal defenses, and in more recent times, the Nike site.

No one questions the right of the Federal government to dispose of the property as they see fit under existing public laws. We also regret being in the position, as reported in the press, of opposing the use of the property by an educational institution. In all fairness to the taxpayers of Nahant we feel we must point out that our Town contains but one square mile in area, has no industrial and very little commercial property and presently has a high percentage of its land in a tax exempt status. Nahant's unique geography and small size strictly limits our land use, thus does not provide the opportunity to broaden our tax base by the development of new areas with high yield property. We must, therefore, make every effort to utilize what little land we have to the best advantage to the Town both from an economic and aesthetic point of view.

We recognize that it is the duty of your agency acting for the Federal government to decide on the final disposition of this area. We also feel it is our obligation to protect the interests of our Town to the best of our ability, thus the above comments are forwarde for your information.

Once again we wish to thank you for your kind assistance anc co-operation.

Sincerely,

Charles A Kelley

Charles A. Kelley, Chairman
BOARD OF SELECTMEN

cak;gp

NPT02178

EXHIBIT 26

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A PROPOSAL

FOR A MARINE SCIENCE RESEARCH INSTITUTE

AT NORTHEASTERN UNIVERSITY



NORTHEASTERN UNIVERSITY
Boston, Massachusetts

April, 1965

NORTHEASTERN UNIVERSITY
Boston, Massachusetts

A PROPOSAL FOR A MARINE SCIENCE RESEARCH INSTITUTE AT NORTHEASTERN UNIVERSITY

Introductory Statement

Northeastern University has for several years been interested in purchasing a shore site on which it could develop facilities for proposed marine biology and environmental engineering programs. Preliminary negotiations have been carried out for various properties both north and south of Boston. The Nahant property described in this application was first brought to the attention of the University by Mr. C. L. Bradley, Chairman of the East Point Subcommittee of the Nahant Conservation Commission. Inspection by officers and faculty of the University has led us to believe that this site will best serve our purposes and allow us to carry out our objectives within reasonable distance of the Boston campus.

In event the University can acquire title to this East Point Nahant property it proposes to establish a Marine Science Research Institute. This Institute would provide a year-round facility for research and instruction in the marine sciences and related fields for Northeastern, as well as other universities and the medical research institutions of Greater Boston.

Interest in the marine sciences has never been higher. For centuries the oceans have provided man with an important means of transportation and with much of his food. The importance of these two functions will increase rather than decrease in the years ahead. Man will also utilize the vast mineral resources locked up in ocean waters and in the lands beneath the sea; even seawater itself will become an important source of fresh water for industry, agriculture and domestic use.

A greater knowledge of the oceans and their floors will become essential for national security, because of the implications of the submarine, long-term weather forecasting, and the disposal of radioactive wastes in ocean water. In addition, studies of marine life under varying conditions - such as high pressures - will have important applications in medicine and in our understanding of life in other environments, including those found in space and on other planets.

Northeastern's Proposed Marine Science Research Institute

Marine laboratories operated by universities and similar non-profit organizations account for the largest share of oceanic research today. There is no marine laboratory in the Greater Boston area, however, despite the presence of numerous educational institutions, many of them among the most distinguished in the world.

For this reason, Northeastern University proposes to establish a Marine Science Research Institute, hereafter referred to as the Institute, at Nahant, a rocky promontory extending out into the Harbor north of Boston. Here the University will provide a year-round facility for marine research. The Institute will serve the needs of Northeastern's own research and instructional programs primarily, but provisions will also be made for investigators from other institutions both at home and abroad.

Researchers in hospitals, medical research institutions, and Government laboratories located in the Greater Boston area urgently need a year-round facility for investigations that require high-quality circulating seawater. The Institute will attract researchers from outside the Boston area as well, because of the ready access to Greater Boston's world famous universities, hospitals, and library collections.

Supervision of the proposed Institute will be provided by an Administrative Committee, headed by Professor Nathan W. Riser, Chairman of Northeastern's Department of Biology. Dr. Riser and other members of the Administrative Committee will be guided by a Scientific Advisory Committee, chosen from senior investigators in the marine sciences. Research space at the Institute not needed by the University will be allocated by these committees on the basis of the scientific worth of the proposed investigation.

A Unique Shore Front Location

Northeastern University seeks to obtain from the General Services Administration the tract of land forming East Point at Nahant, Massachusetts. The tract consists of approximately 28.44 acres, of which the U. S. Navy will reserve 8.30 acres for its own use.

Despite its relatively small area, Nahant has an unusually diverse fauna and a wide variety of littoral habitats, ranging from rockbound cliffs and sandy beaches on the seaward side, to tidal mud flats on the landward side. The University seeks to acquire the whole of East Point in order to make it a wildlife preserve. Only in this way can the unusual littoral and benthonic faunas be protected adequately. In addition, the University can assure that pollution will not jeopardize the continued high quality of the seawater for laboratory studies.

The land now controlled by the General Services Administration at East Point contains several buildings that have undergone extreme vandalism. Only one of these buildings will be used by the University. It is a well-constructed, one-story, cinder-block building containing

approximately 20,000 square feet of floor space. Here the University will develop wet laboratories and other research areas.

Additional facilities to be constructed by the University initially will include a pump house and storage tank for salt water and quarters for a caretaker. Rowboats for near-shore investigations will be provided, and docking facilities for seagoing research vessels are available in nearby Dorothy Cove.

Fields to be Investigated by the Institute

Northeastern's proposed Institute at Nahant will provide a unique research and instructional tool for many departments at the University. Rental of laboratory space to investigators from other institutions will also be an important function of the Institute.

Biology

The Department of Biology proposes to use the Nahant site for the study of phyto-and zooplankton and for algology studies. Sanitary microbiologists in the Department will find the location highly advantageous for their studies on harbor pollution. Basic studies on microbial ecology, microbial associations and microbial variation patterns related to seasonal and other physical changes can be carried out only in the natural environment of the organisms. The Nahant site would make feasible studies on the interchange of microorganisms between marine, brackish, freshwater and terrestrial environments. Essential studies on interrelationships between bacteria and marine animals, including zoonoses, as well as studies on the physiological relationship between microbial organisms and boring and fouling organisms, require a facility with running seawater such as that proposed at Nahant.

Students will come to Nahant for Biology field trips, and the Department will utilize the site for growing land plants in a greenhouse and for growing marine plants along the shoreline. The Nahant site will also serve as a supply area for research and teaching needs at the Institute and at the University. Sea urchin eggs, for example, are in constant demand for cancer research and embryology studies.

The shoreline storage tank for salt water will have several important uses, including the maintenance of continuously circulating, high quality, high salinity water to provide a controlled environment in which marine life can be kept for observation and experimentation.

At some future date, biologists and/or engineers at the University may well find themselves engaged in research dealing with the possibilities of human life beneath the surface of the sea, both on a short term or long-term basis. The Nahant site, with its rapid drop-off into deeper waters, would provide an ideal location for such studies.

Chemistry.

Dr. Conrad M. Jankowski, Associate Professor of Chemistry at Northeastern University, specializes in analytical measurements and is particularly interested in extending his current studies in environmental analytical chemistry to oceanographic chemistry.

Recent work in the field of oceanographic analytical chemistry has been based upon samples that have been removed from their normal "habitat," and thus have been changed by the sampling process and by their new laboratory environment. The Nahant site will permit development of instruments and sampling techniques for underwater use, so that samples will undergo as little change as possible prior to their analysis.

It is proposed that the ionic strength and the concentration of biologically significant ions, such as calcium, iron, and magnesium, be measured and compared with measurements previously reported for "removed" samples. It is also proposed that the necessary instrumentation be designed to measure the highly variable carbon dioxide content of seawater. These measurements could be used to map ecologic zones.

In the years ahead, the Department of Chemistry anticipates increased research activity in the fields of chemical oceanography and marine biochemistry. The proposed Marine Science Institute at Nahant would greatly assist members of the Department's staff in making research contributions in these fields.

Chemical Engineering

For the past seven years Northeastern University's Department of Chemical Engineering has been engaged in research on heat exchanger surfaces very similar to those used in apparatus for the conversion of saline water. In addition, the Department currently plans to begin an investigation of the thermosiphon phenomenon, which is common to most of the distillation units used in saline water treatment. Establishment of the proposed Institute would enable the Department to move part or all of this research to the Nahant location.

Several members of the staff of the Department of Chemical Engineering have done research on the corrosive effects of seawater in the past, and the Department currently offers a graduate course in the field of corrosion. Acquisition of the Nahant site by the University would undoubtedly stimulate research at Northeastern in this important field.

Civil Engineering

The Department of Civil Engineering at Northeastern University could make immediate use of the Nahant site for instructional work in surveying.

The location offers numerous possibilities for taking observations, for electronic, gravimetric and seismic measurements, and for hydrographic surveying.

The Department would also use the site for research and instruction in such aspects of sanitary engineering as conversion of saline water, air pollution and dispersion, and waste-water disposal in salt water, including its effect on marine life.

In addition, the Department would conduct much of its materials research at Nahant. The site would make an excellent exposure station for studies of the resistance of materials and coatings to saline water. Research could also be conducted on concrete to compare the effects of natural freeze and thaw with laboratory cycles.

Mechanical Engineering

During the summer of 1964, Northeastern University's Department of Mechanical Engineering cooperated with the Woods Hole Oceanographic Institute on a corrosion fatigue study of aluminum and steel alloys in a salt water environment. The proposed Marine Science Institute at Nahant would encourage further materials studies in a marine environment, as well as possible future cooperation with Woods Hole in this and other areas. A further area of interest might be a pilot saline water conversion plant.

Electrical Engineering

Research efforts currently underway in the University's Department of Electrical Engineering necessitate the establishment of radio communication with remote sites in such areas as Greenland and New Mexico. Efforts to establish communication from Northeastern's Huntington Avenue Campus have

been only moderately successful because of the intense man-made noise. Locating a radio transmitter at Nahant would in large part overcome these problems.

The Department is also presently engaged in atmospheric research involving night airglow observation. Several stations around the world are now obtaining suitable data, but conditions at the Huntington Avenue Campus do not permit local observations of a meaningful nature. A facility away from the dust and contamination of the city would be of great value.

Northeastern University and the University of Florida have jointly prepared a research proposal that will be submitted through the Air Force Missile Test Center in Cocoa Beach, Florida. The proposal concerns the improvement of ionospheric high frequency channels used for data transmission, and the research involved requires a reasonably quiet radio environment. The Nahant location would provide this location.

In future years, the Department of Electrical Engineering foreseas extensive use of the Nahant site for research in the general area of communications, because the site is away from the coastal landmass and is in a good radio and atmospheric environment. In addition, acquisition of the Nahant site would undoubtedly stimulate faculty currently on the Department's staff who are interested in the field of underwater acoustics, but not active in this field at the present time.

Northeastern University understands that the U. S. Navy plans to use the 8.30 acre tract that it has reserved at East Point for Electronic research. Northeastern's Department of Electrical Engineering looks forward to possible cooperation with the U. S. Navy in this research once the University's new Institute is established.

Bio-medical Engineering

Bio-medical engineers are interested in the effects of physical agents - such as high pressures, electromagnetic radiation at various wavelengths, and electric and magnetic fields - on the growth, development, metabolism and function of various species of marine organisms. Already marine organisms are being used in embryological studies and in studies on teratogenesis.

Many individuals, qualified in the engineering or physical sciences, are interested in applying their backgrounds and techniques to problems in the biological sciences. Such problems include (1) the study of electrical properties of various marine organisms, (2) the study of physiological and behavioral processes by means of small telemetry units for attachment to the organism, using techniques which will allow transmission of information through the aqueous medium, and (3) the investigation of various biological sensors and transducers within the organism. Northeastern's proposed Marine Science Institute can provide an important facility for training and research in the field of bio-medical engineering.

Natural Science

Northeastern University's Department of Natural Science now offers elective courses in General Oceanography and Conservation of Natural Resources. The Nahant site will provide for the Department an ideal outdoor laboratory for field trips and marine projects related to these courses, as well as other courses currently offered in the natural sciences.

In the years ahead, studies are envisioned in the productivity of marine ecosystems, taking into account seasonal changes in temperature, salinity and available nutrients. Natural fluctuations in the available marine flora and fauna at Nahant would provide an ideal situation to study

the effects of pollution and of man's encroachment into the sea. Additional studies should result as man increases his utilization of natural resources at the edge of the sea. Their utilization will require more knowledge about the physical, chemical and biological character of in-shore marine environments.

Additional Uses for the Nahant Site

Northeastern University seeks to utilize the Nahant site to its fullest potential. For this reason, activities other than those just mentioned would be permitted, provided that they did not interfere with the scientific activities of the proposed Institute.

The University has an active Underwater Society, for example, with a membership of more than seventy-five young people - one of the largest underwater societies on any college campus in the nation today. The membership includes many trained scuba divers who are eager to volunteer their time for the research activities of the proposed Institute. At present, members of the Society are called upon by the American Littoral Society to assist in such projects as making fish counts. Northeastern's Underwater Society would use the Nahant site as a training and exploration area.

The University's Boston-Bouve' College has several programs in physical education and recreation that involves marine activities. Life saving is currently being taught in pools and fresh water lakes, but future instructors also need experience under simulated beach life saving conditions as well. In addition, the Nahant site would also be an ideal location for sailing instruction and recreational sailing.

The full range of additional activities which could be carried on at the Nahant site cannot now be fully anticipated. As the proposed Institute develops, other ways in which to utilize the facility will undoubtedly be uncovered. Students in fine arts courses, for example, might come here for instruction in sketching and painting.

Northeastern University's Financial Capability

Northeastern University will use its own resources to assure the development of the proposed marine science research institute, and operate it as part of the total educational program of the University. The annual operating budget of Northeastern University is now $15,800,000 per year, and the total gross corporate assets are $56,000,000. The University is engaged in a $52,100,000 general development campaign and its assets are growing at a steady rate.

An expenditure of $45,000 has been authorized for preparation of the site including general clean-up and the demolition of existing buildings damaged beyond repair by vandals.

EXHIBIT 27

April 30, 1965

The Regional Director
Utilization & Disposal Service
General Services Administration
Post Office Building
Boston, Massachusetts

Re: NIKE Ajax Site B-17
Nahant, Mass.
D-Mass-601

Gentlemen:

It is the understanding of the Nahant Conservation Commission that Northeastern University is interested in the acquisition of the Government-owned property at East Point, Nahant, Massachusetts, for research and educational purposes.

The Nahant Conservation Commission has given prolonged consideration to what use of the property would be most desirable in the interests of the inhabitants of the Town. In so far as conservation aspects are concerned (namely, preservation of the unusual beauty of this striking bit of unspoiled cliff-lined coastline) we are of the opinion that it is in the interest of the Town to have the property pass to an educational institution such as Northeastern University, particularly if there were reserved to the townspeople the right to walk along a pathway on the coastal edge of the upland and if some assurance is given that only low-lying or otherwise inconspicuous buildings are contemplated.

At the 1965 Town Meeting the voters expressed their approval of the acquisition of the right to use a pathway over the property. It is our belief that such a right is more likely to be obtained from the University than it would be from a developer.

The special geologic interest of the rocks make it additionally desirable that the property be controlled by a reputable educational institution.

It seems entirely conjectural that development of the property for building purposes would be of economic benefit to the Town. Indeed, it is speculative whether private development would be feasible.

It is possible that the opportunity to dispose of the property to an institution of the character of Northeastern University may not present itself again.

Yours truly

NAHANT CONSERVATION COMMISSION

By _____
Chairman

EXHIBIT
18

NPT01377

EXHIBIT 30

BOOK 5344 PAGE 142

DEED WITHOUT WARRANTY

KNOW ALL MEN BY THESE PRESENTS: That the UNITED STATES OF AMERICA acting by and through the Secretary of Health, Education, and Welfare by the Regional Director of the Department of Health, Education, and Welfare, Region I, under and pursuant to the powers and authorities contained in the Federal Property and Administrative Services Act of 1949 (63 Stat. 377) as amended, the Civil Rights Act of 1964, and the regulations promulgated thereunder, and the Department of Health, Education, and Welfare Statement of Organization and Delegation of Authority, Part 2, section 2-249.10(A)(3) (29 F.R. 5096) for and in consideration of the observance and performance by Northeastern University, a corporation organized under the laws of the Commonwealth of Massachusetts, of the covenants, conditions, reservations, and restrictions hereinafter contained and for other valuable consideration grants to Northeastern University, its successors and assigns, subject to the covenants, conditions, reservations, and restrictions hereinafter set forth certain parcels of land with the buildings thereon situated in the Town of Nahant, County of Essex, Commonwealth of Massachusetts more particularly bounded and described as follows:

The fee simple title to land acquired by the United States of America through the filing of a Declaration of Taking on February 3, 1941 entitled, "United States of America Petitioner vs. 13.98 Acres of Land, More or Less, Situate in Nahant, Essex County Massachusetts and H.C. Lodge Estate, Defendant, Civil No. 6341," and obtaining final judgment thereon in the United States District Court in and for the District of Massachusetts.

TRACT A (Parcel #1)

A certain parcel of land situated in the Town of Nahant, County of Essex, Commonwealth of Massachusetts, being more particularly bounded and described as follows:

SOUTHWESTERLY by Nahant Road and a portion of the former Nahant Road four hundred thirty six and 27/100 (436.27) feet;

NORTHWESTERLY by land now or formerly of Thomas P. Beal et al, Trustees, measuring on the upland ninety one and 90/100 (91.90) feet;

NORTHEASTERLY by Massachusetts Bay;

SOUTHEASTERLY by land of the United States of America five hundred and eleven (511) feet more or less;

SOUTHEASTERLY by land of the United States of America seventy and 98/100 (70.98) feet;

EXHIBIT tabbies 26

With respect to damages to or destruction of any property of the grantee, its successors or assigns, or for injuries to the person of the grantee, or the grantee's officers, agents, servants or employees or others who may be on the granted premises at their invitation or the invitation of any one of them, arising from or incident to the use, maintenance, repair or replacement of the aforesaid easements, the United States of America assumes no liability beyond the scope of its liability under the terms and provisions of the Federal Tort Claims Act. The United States of America does, however, hereby covenant on behalf of its successors and assigns that the property of the grantee, its successors and assigns, that is damaged or destroyed by the successors, assigns or licensees of the United States of America, incident to the use, maintenance, repair or replacement of the aforesaid easements, shall be promptly repaired or replaced by the said successors or assigns of the said United States of America, to the reasonable satisfaction of the grantee, its successors or assigns, or the cost of such repair or replacement (if the same is performed by the grantee, its successors or assigns) paid to the grantee, its successors and assigns. The United States of America, for and on behalf of its successors and assigns, further covenants and agrees that said successors and assigns will indemnify and hold harmless the grantee, its successors and assigns, of and from any claims for personal injury incident to the use, maintenance, repair and replacement of the said easements by the successors, assigns, or licensees of the said grantor.

Said property conveyed hereby was declared surplus and was assigned to the Department of Health, Education, and Welfare for disposal for educational purposes pursuant to the provisions of the aforementioned Federal Property and Administrative Services Act of 1949 and of applicable rules, regulations and orders.

This Deed is executed and delivered to Northeastern University, its successors and assigns, without covenants or warranties by or on

EXHIBIT 32

APPLICATION FOR PURCHASE OF REAL PROPERTY FOR EDUCATIONAL UTILIZATION

AS AUTHORIZED BY SECTION 203(k) OF THE FEDERAL PROPERTY AND

ADMINISTRATIVE SERVICES ACT OF 1949, AS AMENDED, TO

Department of Health, Education, and Welfare

Region I - Boston, Mass.

October 23, 1974

SHIPS ELECTRONICS SYSTEMS EVALUATION FACILITY

AT

EAST POINT, NAHANT, MASSACHUSETTS

Northeastern University
Boston, Massachusetts



NEU00022889

Nahant_80A_033535

4. Proposed Program of Use

A. This proposal is that the U.S. Government deed to Northeastern University 8.3 acres at East Point in Nahant. This surplus property is completely surrounded by the ocean and by a 20.4 acre tract which the U.S.Government deeded to Northeastern University in 1965. Northeastern's Marine Science Institute has been established on the 20.4 acre site, and acquisition of the adjacent 8.3 acre tract is very important for the future protection of the existing program as well as the expansion of many aspects of it. Because of its intimate relation to the present proposal, the existing program will be described.

The program of the Marine Science Institute concentrates upon marine biology and ecology. Its research is pertinent to current questions of public policy involving ecology and environmental quality, pollution, the world supply of seafood, and the contamination of wildlife and seafood. One of the current major projects relates to pollution, water chemistry, and sediment chemistry in Boston Harbor. Another major emphasis is on the study of mollusks, which are of fundamental importance in the field of mariculture -- food from the sea and the possibility of commercially feasible methods of cultivating the oceans.

The Northeastern Institute at Nahant is a unique ecological study area which was very much needed in this part of the country. With its history as a private estate and then a military reservation, it has an undisturbed shoreline which has been protected from man-made disturbances and contamination, making it particularly valuable because it provides researchers with:

Protected tide pools and rocky sea-land interfaces for the study of marine plants and animals in their natural environment.

A bountiful source of unpolluted, high salinity sea water for investigations and observations of marine life in laboratory tanks.

Base line data accumulated from seven years of monitoring and invaluable for evaluating future environmental changes, whether produced by man (such as oil spills) or by nature (such as the "red tide" or severe hurricanes.)

4. Proposed Program of Use (Continued)

The shoreline and tide pools furnish the field data to corroberate and validate laboratory studies. The facilities in the buildings are dependent upon the adjacent source of natural sea water and marine organisms, both plants and animals.

Ecological studies of the succession of marine life on shorelines performed at Nahant require a three year period under controlled conditions. Small areas of about six square feet are cleaned of all life and compared with comparable areas left alone. Cages are anchored flush on the shoreline rocks to prevent accidental migration where organisms are settling naturally, facilitating the analysis of predation and competition. Many of the dissertations prepared at Nahant have used these procedures.

Field studies by hundreds of advanced biology students from this region of the country are performed in three to five day periods by means of careful observations of shoreline activities. No general collecting is allowed; marine phenomena under natural conditions are observed.

The Town of Nahant receives special services from the Northeastern Laboratory for its public schools. The staff of the Institute has helped to establish a marine science program in the junior high school and now provides services for the teachers. Accompanied by teachers, students come to the East Point site for photography and marine biology and use the facilities in the laboratory building.

There is also an important geology component to the program at the Northeastern Institute because of a geological formation found nowhere else in the United States where it is easily accessable for study. This is the Weymouth Formation, an outcropping of lower Cambrian strata which is also remarkable for its demonstration of intrusion and faulting. Approximately 800 geology students per year come on field trips from New England and New York to study this formation, and five theses have recently been written about it. The formation is actually on surplus property, and arrangements for its study by students have been made by Northeastern University under the gentlemen's agreement with the U.S. Navy.

Although operated solely by Northeastern, the Marine Science Institute is available to scientific investigators from other institutions

4. Proposed Program of Use (Continued)

as well as to students making field studies in biology and geology. Only when indoor laboratory facilities are employed is a fee charged to cover costs.

B. If the surplus property is deeded to Northeastern University, educational activity on the property will be taking place very shortly afterwards. Rehabilitation and clean-up activities will begin as soon as practicable and are scheduled to be completed within two years.

C. There are no plans for a cafeteria, clinic, bookstore or other related services on the property.

D. The U.S. Army Reserve Officers Training Corps (ROTC) has had a unit at Northeastern University continuously since 1951.

E. As indicated in "3B" above, one structure on the site will be utilized for the Northeastern program. This is the missile assembly and test building, which will be converted to a one story garage and storage building with a floor area of approximately 1,500 square feet. Expenditures to prepare this building for use, to clean up the area, and to restore utility services are estimated at $60,000, to be expended over a two year period.

F. Detailed floor plans for this structure are not available at present.

G. No related personal property is requested.

5. Proof of Need

A. Vital to the continued success of the studies at the Marine Science Institute is the protection of the area and its preservation in the natural state. Although many visitors now come to the site, they are under the supervision of the Northeastern staff so that the ecology of the research areas is not disturbed. If the surplus property should be opened to the general public, it would be difficult to prevent trespass onto adjacent shoreline research projects, to prevent vandalism, to avoid defacing of the unique geological formation and general littering. Any use of this land incompatible with preserving the natural state of adjacent shorelines would be very detrimental to the existing program.

5. Proof of Need (Continued)

Should the Marine Science Institute be unable to maintain the shoreline in its present natural state and to protect the research projects from random human intrusions, then much of the value of the site would be lost and Greater Boston would be without an appropriate laboratory for research of growing importance to public policy formulation.

The Nahant laboratory is the only marine research installation within commuting distance of greater Boston, and it is used extensively by faculty and students from Harvard, M.I.T., Tufts, Suffolk, Boston College, University of Massachusetts, Clark University, Adelphi University, Skidmore College, Keuka College, Roger Williams College, and the University of Rhode Island. Additional student researchers have come from Yale and Leeds University, England.

Because of the close proximity to many outstanding universities, faculty members are able to conduct studies on a year round basis, a sharp contrast with other marine laboratories where research is limited to summer months when faculty can be in residence away from a main campus.

The protected coast-line has also attracted investigators from the University of Sao Paulo, Brazil, Royal Ontario Museum of Canada, National Museum of Canada, U.S. National Museum, Allan Hancock Foundation of the University of Southern California, University of South Florida, Royal Museum of Copenhagen, Denmark, Natural History Museum of Stockholm, Sweden, University of Paris, Dunstaffnage Marine Research Laboratory, Scotland, Geological Institute of Germany.

The entire area, including the 8.3 acre section, should logically come under the administration of Northeastern's Marine Science Institute. When the site of this Institute was deeded by the Government to Northeastern in 1965, the 8.3 acres was held back by the Navy for possible future use. The site is completely surrounded by the established Northeastern Institute, and there is no natural boundary between the two pieces of property.

Under these circumstances it would be very inefficient for a second research organization to be established on the 8.3 acres. Such an organization would be much more limited in the variety of its shoreline, lacking extensive tide pools and ready access to sea water

5. Proof of Need (Continued)

of high quality. (The waters on the southeasterly shore of the 8.3 acres have been exposed to the pollution of the urban area.) There would be a dependency upon the Northeastern Institute for established services, and much administrative time would be required to coordinate and harmonize the efforts of two different organizations. Overhead costs and inefficiencies would very likely increase, consuming resources which might otherwise be devoted to study and research.

As indicated above, control of the surplus property is essential for the protection of the research areas of the Marine Science Institute, and this control should logically be by the immediately adjacent Institute. Furthermore, the additional eight acres are needed for the expansion and improvement of the ongoing programs of the Institute.

B. Reservations for field studies by Biology classes at Nahant must now be made three months in advance to serve the many different groups coming from throughout the region. With the permanent use of the 8.3 acre tract, the Marine Science Institute would be able to serve another 200 advanced biology students per year (present level is 800) and improve the quality of the research experience for all students. Certain low-tide periods are very desirable for research, but the number of these desirable periods during the academic year is limited, so the additional protected shoreline would enable more students to study during the much desired periods.

On the basis of a "gentlemen's agreement" with the U.S. Navy, the 8.3 acre site has been used for temporary projects and for observation by students on geology field trips during the past few years. Acquisition of the 8.3 acre site by the Marine Science Institute would not only substantially increase the protected shoreline to be used for intensive and permanent studies, but it would also add important, contrasting variety to the permanently protected shoreline. This is because the tide pool of the surplus property faces southeast on Broad Sound, and it receives water from the Boston shoreline which is becoming highly polluted by sewage systems and effluent from industries. On the other hand, the tide pool of the Northeastern property faces onto Nahant Bay and receives water directly from the open ocean. To illustrate, studies of coralline algae on the Broad Sound shoreline have found an encrusting species, while similar observations on Nahant Bay have found an arborescent species, and these contrasts have added to the overall value of the studies.

10. Describe the Mission and Program of the Applicant (Continued)

Northeastern University has been a member of the New England Association of Schools and Colleges since 1940, with its membership reaffirmed in 1967. This accreditation includes the Marine Science Institute.

11. Growth Trend of Overall Program

	Full-Time Students	Part-Time Students	Staff	Course Enrollments in Biology
1965	10,896	18,029	1,419	3,708
1966	12,321	19,266	1,670	3,864
1967	13,223	21,393	1,965	4,357
1968	14,364	20,963	2,022	4,503
1969	15,117	21,746	2,073	4,681
1970	15,502	19,915	2,045	4,887
1971	15,054	19,069	2,082	5,570
1972	15,389	18,310	2,140	6,112
1973	15,246	18,521	2,164	6,336
Projected	15,000	19,000	2,180	6,500

12. Justification for Proposed Program

A. and B. Acquisition of the surplus land by Northeastern's Marine Science Institute is very important for the continued success and expansion of the Institute. (a) It will insure the preservation of the Institute's adjacent shorelines in their natural state, very important for research. (b) It will provide a substantial increase in protected shoreline to better serve more students and facilitate advanced research studies. (Further details are given in Section 5 above.)

One function of higher education is to make studies on current issues of current public policy, and Northeastern's Nahant laboratory is the

12. Justification for Proposed Program (Continued)

only protected site for marine ecology studies within commuting distance of the many universities in Greater Boston. With food supply now becoming a world-wide issue, it is significant that a doctoral dissertation completed at Nahant has resulted in a new and successful commercial venture in mariculture (food from the sea).

C. With respect to zoning restrictions on the surplus property, there are none which conflict with the proposed program. Any changes which are made will be in conformance with zoning restrictions.

D. No income producing activities are planned for the surplus property.

13. Environmental Assessment by Applicant

There will be no environmental impact in the customary sense of detrimental human activities or structures.

One of the prime objectives of this proposal is to give thousands of students a greater understanding and awareness of the environment, together with contributing to the education of highly trained specialists in the fields of environment and ecology.

This proposal will provide protection for marine brood stock, spawning grounds, marine fauna and flora, including nursery areas for lobsters and crabs.

The proposal is important to the maintenance of a research institute which may be called upon for consultants or for studies by organizations such as the Environmental Protection Agency.

14. Protection and Maintenance Assurance in the Event of Title Reversion

Northeastern University agrees for itself, its successors and assigns, that in the event the requested property is acquired and the Government, due to a breach of conditions subsequent contained in the conveying instrument, elects to effect title reversion and until such time as title is actually reverted, the applicant will protect and maintain the property at a minimum to conform to the standards prescribed by the Federal Property Management Regulations 101-47.4913, a copy of which is attached hereto and made a part hereof as Exhibit 3.

EXHIBIT 33

OFFICE OF THE
BOARD OF SELECTMEN
BOARD OF HEALTH AND PUBLIC WORKS DEPARTMENT

November 22, 1974

Mr. Albert A. Gammal, Jr.
Regional Administrator, Region 1
General Services Administration
John W. McCormack Post Office and Courthouse
Boston, Massachusetts 02109

Dear Mr. Gammal:

The Town of Nahant hereby makes formal application for the acquisition of the Electronic Systems Facility located in the Town of Nahant. This is the property referred to in your letter dated September 9, 1974, addressed to the Chairman of the Nahant Board of Selectmen.

This application is made by the Board of Selectmen acting for and in behalf of the Town of Nahant under the authority of the vote of the Town Meeting held on November 11, 1974. A certified copy of the vote of the meeting is appended hereto.

Application for the purchase of this facility is made under 40 U. S. C. 484 (e) (3) (H) wherein the Town of Nahant requests that they purchase the property by negotiated sale for public purposes generally.

The Town of Nahant wishes to acquire the property in fee title. The Town of Nahant asks that the General Services Administration accept this letter as formal application for the property and will appropriate the funds necessary for the purchase within 60 days once a purchase and sales price is determined. We wish to advise that had the Town Meeting known the selling price as determined by General Services Administration on November 11, 1974 that funds undoubtedly would have been appropriated at that time. As the price was unknown no appropriation could be made and further Town Meeting action will be required to raise the money, thus our request for a 60 day period to obtain the funds.

Since the Town of Nahant was notified by General Services Administration of the availability of this site the Board of Selectmen and the Advisory Committee have held five public meetings with all other elected and appointed officials of the Town and interested citizens to determine the use that this area could best be used. In addition, as indicated above, a special Town Meeting has been held wherein further comments and suggestions were made for its use by voters and officials. As a result the



NPT01446

Town Meeting voted unanimously to authorize the Selectmen to take the necessary steps for Nahant to acquire the site.

The Town intends to use the site, if acquired, for the following public purposes:

1. Passive recreation, or in simple terms as a scenic overlook, with the possibility of use as a picnic area.

2. Educational purposes: The Nahant School System is presently using the area owned by Northeastern (with their permission) adjacent to the site for limited studies in ecological, marine biological and photography classes. It is anticipated that such educational use would be increased if the Town became the owner of the 8 acres in question.

3. Use as a training site on a limited basis for the Town Fire Department and Civil Defense.

4. The preservation of open space in the Town.

At the time this property became available we learned that HEW had also requested the site be turned over to them for transfer to Northeastern University who presently owns approximately 26 acres of land adjacent to the Electronic Systems Facility. We have met with officials from Northeastern University a number of times since September in an attempt to work out a mutually acceptable plan for the area. We have expressed to Northeastern the Town's willingness to negotiate with them for any reasonable use or access to the property that their program in Nahant may require. We feel certain, that if the Town were to acquire the property, we could accommodate the needs of the University.

In support of the Town's application for this area we would like to point out, briefly, a few pertinent facts. Nahant is the smallest community in area in Massachusetts comprising of 1.06 square miles. With a year round population of 4200 living in mostly single family homes, we have a heavy density of population. Open space in the Town is at a premium. The Town has given up much of its finest recreational area to the Commonwealth for park purposes in the MDC Beach Reservation on the causeway. In the early 1900's the Town lost many homes and much tax revenue when the Federal Government acquired some 50 acres in the Town for military purposes. This land was eventually developed into a Coast Artillery Battery known as Fort Gardner in World War I and Fort Ruckman in World War II. The Town was required to pay $26,000 for this area shortly after World War II with restrictions that it be used for recreational, educational and other public purposes. Later, from the middle 1950's to mid 1960, part of this area was taken back by the military for a Nike Site,

Nahant, Mass.
N-Mass-01A

and government military housing (which is still in existence). Much of the area's beauty has been destroyed and made practically unusable by a vast underground system which is of constant concern and expense to the Town because of the hazards.

In 1940 and 1941 the Federal Government acquired additional land, namely, the approximately 34 acres at East Point. Twenty-six of these acres are presently owned by Northeastern and provide no revenue to the Town. The other 8 acres comprise the Electronic System Facility. Upon acquisition of this land some 34 years ago it was removed from private ownership and taken off the tax roles. Although the townspeople did not have any legal rights to the property prior to acquisition by the Federal Government, the Lodge Estate was open to the townspeople for hiking and enjoyment of the view. It has been effectively closed to Nahanters since that acquisition.

The Federal Government's land acquisition in the Town of Nahant, considering its area, has been considerable, equalling 13% of the total acreage. The acquisition of this land has resulted in not only serious tax losses to the community for periods of 70 and 34 years, but the use of the land by various military units during this period added considerably to the burden on our local fire, police, sewer, water and road facilities.

In light of the above we respectfully ask that the Town of Nahant be given most careful consideration by GSA in its efforts to acquire this 8.3 acres. We shall be glad to supply any further information you may need, and of course, will be happy to meet with you at your convenience.

We also, at this time, would ask that you supply us with the appraisal of the property as soon as possible. Please accept our thanks for your assistance and consideration in the past on this matter. We would like at this time to also thank Mr. James O'Connell and Mr. Paul Cantrell for their very fine help to the Town.

Very truly yours,

Robert W. Steeves, Chairman
for the
BOARD OF SELECTMEN

enc
cak;p

EXHIBIT 34

BK6182 PG415

REG. AS DOC. NO. 154763

KNOW ALL MEN BY THESE PRESENTS: That the UNITED STATES OF AMERICA, acting by and through the ADMINISTRATOR of GENERAL SERVICES, under and pursuant to the powers and authority contained in the provisions of the Federal Property and Administrative Services Act of 1949 (63 Stat. 377) as amended, and the regulations and orders promulgated thereunder for and in the consideration of the sum of ONE HUNDRED FIFTEEN THOUSAND DOLLARS ($115,000.00) paid, receipt of which is hereby acknowledged, grants to the TOWN OF NAHANT, County of Essex, Commonwealth of Massachusetts, the following described property:

Two (2) certain parcels of land situated in the Town of Nahant, County of Essex, Commonwealth of Massachusetts, together with the improvements thereon, more particularly described as follows:

TRACT A

Beginning at a point on the former division line between land of A. D. Hill, et al, Trustees and land of the Henry Cabot Lodge Estate at the shoreline of Massachusetts Bay;

thence Southwesterly along the meanders of Massachusetts Bay to a point at other land formerly of A. D. Hill, et al, Trustees;

thence by said other land of A. D. Hill, et al, Trustees, on the following courses and distances;

North 43° 35' West 260 feet, more or less; and

North 46° 25' East 313.52 feet to land formerly of the Henry Cabot Lodge Estate;

thence by said land formerly of the Henry Cabot Lodge Estate on the following courses and distances;

South 50° 30' 45" East 45.08 feet;

North 26° 39' East 12.70 feet;

South 63° 00' East 36.75 feet;

South 26° 22' West 20.10 feet; and

South 49° 47' 20" East 266.10 feet to the point of beginning.

Containing 2.36 acres, more or less.

TRACT B

Northwesterly by other land formerly of the Henry Cabot Lodge Estate 42.86 feet;

Northwesterly by other land formerly of the Henry Cabot Lodge Estate 70.98 feet;

Northwesterly by other land formerly of the Henry Cabot Lodge Estate 511 feet, more or less;

Northerly by Massachusetts Bay;

Southeasterly by Massachusetts Bay;

Southwesterly by land formerly of A.D. Hill, et al, Trustees, measuring on the upland 266.10 feet;

Northwesterly by land formerly of A.D. Hill, et al, Trustees, 20.10 feet;

Southwesterly by land formerly of A.D. Hill, et al, Trustees, 36.75 feet;

Southeasterly by land formerly of A.D. Hill, et al, Trustees, 12.70 feet;

Southwesterly by land formerly of A.D. Hill, et al, Trustees, 45.08 feet;

Containing 5.94 acres, more or less.

Said two parcels are conveyed subject to and with the benefit of all easements and rights-of-way relating to an access road(s) and relating to sewer, water and electrical lines and conduits (as well as rights of entry on adjoining parcels for maintenance, repair and replacement of said road(s) and lines) which were reserved in a deed from the United States of America (Department of Health, Education and Welfare) to Northeastern University, Boston, Massachusetts, dated 23 February 1966 recorded Essex South Registry of Deeds Book 5344 Page 142 and recorded in the Essex South District of the Land Court as Document No. 118926 noted on Certificates of Title Nos. 6814 and 6944 to which deed reference may be had for a complete description of the rights granted hereby.

The aforesaid parcels comprise portions of larger areas originally acquired by the United States of America pursuant to condemnation proceedings instituted on behalf of the Department of the Army. Tract "A" is a portion of a 14.46 acre parcel of land acquired by the United States of America by Declaration of Taking filed on 7 November 1941 and decree entered thereon on that same date in an action entitled "United States of America, vs. 14.46 acres of land, more or less, situate in Essex County, State of Massachusetts and Harmon P. Elliot, et al, being Misc. Civil No. 6439 in the United States District Court for the District of Massachusetts.

Tract "B" is a portion of a 13.98 acre parcel of land acquired by the United States of America by Declaration of Taking filed on 3 February 1941 and decree entered thereon on that same date in an action entitled, "United States of America, vs. 13.98 acres of land, more or less, situate in Nahant, Essex County, Massachusetts and H. C. Lodge Estate, et al," being Misc. Civil No. 6341 in the United States District Court for the District of Massachusetts. By Memodandum dated 27 September 1965 from the Secretary of the Army to the Secretary of the Navy, the aforedescribed Tracts A and B, representing a portion of the Army's launcher area of former NIKE-AJAX Site B-17, at Nahant, Massachusetts together with improvements thereon, were transferred to the Department of the Navy pursuant to Title 10, United States Code, Section 2571(a).

The remaining acreage of the two condemnation actions described above, together with other lands, was conveyed to Northeastern University by the aforementioned deed.

The property transferred hereby was duly determined to be surplus and was assigned to the Administrator of General Services for disposal pursuant to the Federal Property and Administrative Services Act of 1949 (63 Stat. 377) as amended, and the applicable rules, orders and regulations.

BK6182 PG417

This deed is executed and delivered to the said TOWN OF NAHANT, its successors and assigns, without any covenants whatsoever, either express or implied.

IN WITNESS WHEREOF, the UNITED STATES OF AMERICA, acting by and through the ADMINISTRATOR of GENERAL SERVICES, has caused these presents to be executed as a sealed instrument in its name and behalf this 16th day of September 1975.

UNITED STATES OF AMERICA
Acting By and Through the
ADMINISTRATOR OF GENERAL SERVICES

By Alan E. Gorham
Acting Regional Administrator
General Services Administration
Boston, Massachusetts

WITNESSES:
Mary A. Daley
Helen L. Bakassarian

COMMONWEALTH OF MASSACHUSETTS)
COUNTY OF SUFFOLK) ss.

In Boston, in said County and State, on this 16th day of September 1975 before me personally appeared ALAN E. GORHAM, Acting Regional Administrator, General Services Administration, Boston, Massachusetts, duly empowered and authorized, and delegated by the Administrator of General Services, to me known and known by me to be the party executing the foregoing instrument and acknowledged said instrument by him duly executed, to be the free act and deed of the UNITED STATES OF AMERICA, as his free act and deed individually, and in his capacity as Acting Regional Administrator, General Services Administration, Boston, Massachusetts.

William F. Manley
WILLIAM F. MANLEY
Notary Public
My Commission Expires November 4, 1977

SEP 23 1975

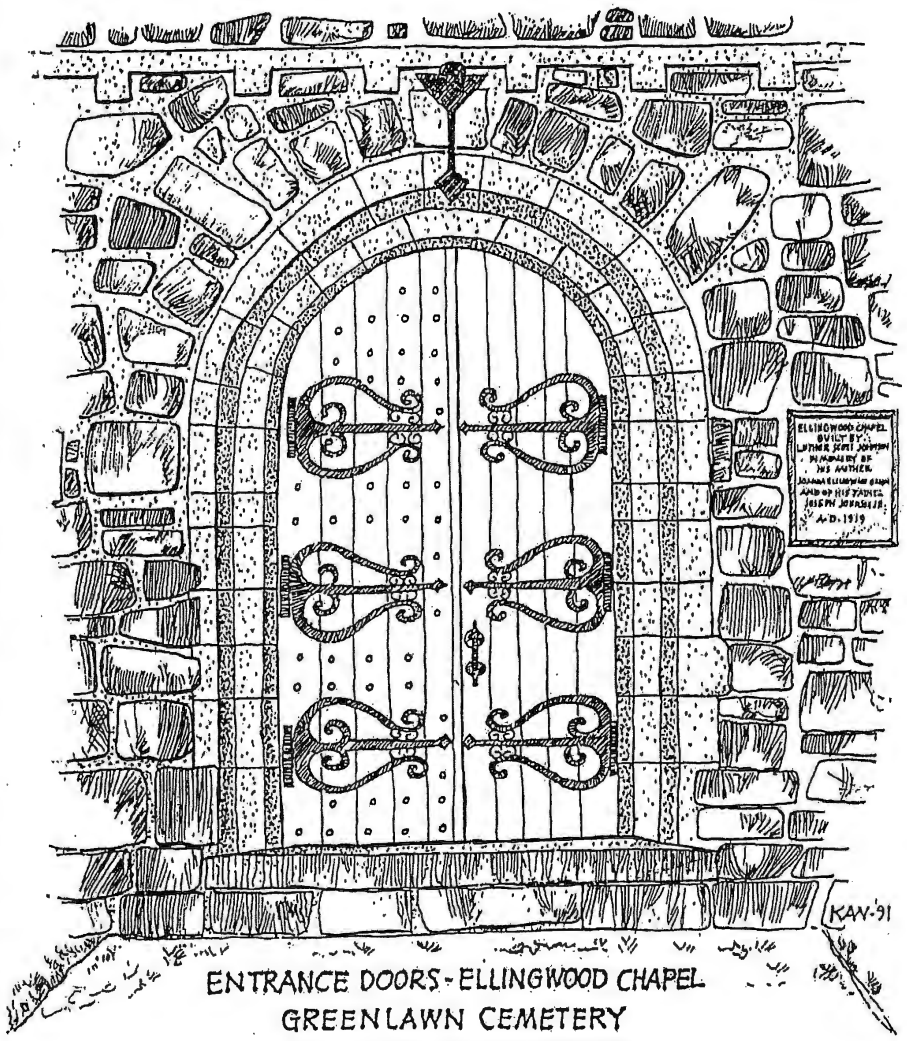
LAND COURT
APPROVED FOR REGISTRATION on Ctf 68146944
no ctf to issue until plan appr
By Chief Title Examiner

ESSEX SS. RECORDED Sept. 24 1975 533 M. PAST 8 A.M. INST. #16

EXHIBIT 52

EXHIBIT
Trussell
#26
MEY 11/29/91
PENGAD 800-631-6989

Nahant Annual Report



ENTRANCE DOORS - ELLINGWOOD CHAPEL
GREENLAWN CEMETERY
NAHANT, MASSACHUSETTS

FOR THE YEAR ENDING DECEMBER 31, 1991

Annual Town Meeting April 27, 1991

Article 44. To see if the Town will vote to designate the wetlands resource area at Lowlands as conservation land, as petitioned for by the Open Space Management Committee.

Voted: Upon motion, duly seconded, it was a unanimous vote in favor to indefinitely postpone action on this article.

Article 45. To see if the Town will vote to raise and appropriate and/ or appropriate from available funds in the treasury a sum of $30,000.00, as partial funds necessary, for further implementation of the master plan for Lodge Memorial Park, East Point, said monies to be devoted to professional and/or construction services, including, but not limited to, base fill, topsoil, indigenous plantings/ground cover, etc., as petitioned for by the Conservation Commission.

Lodge Park

Voted: Upon motion, duly seconded, it was a unanimous vote in favor to raise and appropriate the sum of $1.00 for further implementation of the master plan for Lodge Memorial Park, East Point.

Article 46. To see if the Town will vote to raise and appropriate and/ or appropriate from available funds in the treasury a sum of money to cover incidental expenses incurred by the Army Engineering Reserves during implementation of the master plan for the Lodge Memorial Park at East Point, as petitioned for by the Conservation Commission.

Voted: Upon motion, duly seconded, it was a unanimous vote in favor to raise and appropriate $500.00 to cover incidental expenses incurred by the Army Engineering Reserves during implementation of the master plan for the Lodge Memorial Park at East Point.

Carolyn Cummings-Saxton, member of the Nahant Planning Board arose to offer the following motion:

I move that Articles 48, 49, 50 and 51 be considered before Article 47. The motion was duly seconded and passed by a unanimous vote in favor.

Article 48. To see if the Town will vote to amend the zoning. by-laws as follows, as petitioned for by the Planning Board:

1. by striking the word, "Regulations" in the definition of "Lot, Non-conforming" in Section 2.02, and substituting therefor the word, "Requirements"

2. by striking the word, "not" from the second sentence of sub-section 3 of Section 4.12A

3. by striking the words, "Board of Appeals", from sub—section 2 of Section 6.04 and substituting the words, "applicable special permit granting authority", and by striking the words, "In the same district" from that sub—section.

4. by striking the words, "Board of Appeals", from Section 6.05C and substituting the words, "applicable special permit granting authority"

Article 51. To see if the Town will vote to amend the zoning by—laws and official zoning map as follows, as petitioned for by the Planning Board:

1. by striking the official zoning map previously adopted, and substituting therefor a new official zoning map, prepared under the direction of the Planning Board

2. by striking the words, "October 2, 1962", from Section 3.02A of the zoning by-laws and substituting the date on which the new official zoning map is adopted

Voted: Upon motion, duly seconded, and after the report of the Planning Board had been read into the record of the meeting, it was voted (yes—69; no-3; abstentions-3) to amend the zoning by-laws and official map as follows:

1. by striking the official zoning map previously adopted and substituting therefor a new official zoning map, incorporating all changes noted at prior Town Meetings, and by placing additional properties in the Natural Resource and Public Districts as follows:

Natural Resource District

Egg Rock
Pea Island
Saunders Ledge
Forty Steps Beach and all adjacent Town-owned land
East Point, including Canoe Beach, the Lodge Grant, Lodge Park and land owned or controlled by Northeastern University the MDC Nahant Beach reservation, causeway and land west of the causeway, from the line with the City of Lynn to the end of the causeway
Land west of Nahant Road and Castle Road, from the end of the causeway to, but not including #29 Castle Road
The Town-owned land at Castle Road and Black Rock Beach
Tudor Beach and all adjacent Town—owned land
Tudor Wharf and Marjoram Park, the adjacent parking area and beach, and all adjacent Town-owned land
Short Beach and adjacent land owned or controlled by the Town and the United States Coast Guard
The Lowlands area, including all town—owned land within the area bounded by Nahant Road, Spring Road, Flash Road, Fox Hill Road and Ward Road Bailey's Hill and all adjacent Town—owned land
Flash Road playground and recreational area
Playground area in the rear of the Nahant Public Library
Massachusetts Audubon Society Thicket
Greenlawn Cemetery
The Bangs Trust property

Excluding from the above descriptions any portion of any parcel of land which is presently utilized for private residence purposes.

Public District

Nahant Public Library and adjacent land
Department of Public Works and Fire Department headquarters and adjacent parking and storage areas
Police Station and adjacent land
Spindrift apartments and adjacent land
Johnson School and all adjacent land under the control of the School Committee

2. by striking the words, "October 2, 1962", from Section 3.02A of the zoning by law and substituting the words, "April 30, 1991".

Article 47. To see if the Town will vote to amend the zoning by-laws as follows:

1. by adding the following Section 2.02, immediately after the definition of "Fast—order Food Establishment":

Fence: a hedge, structure, or partition, erected for the purpose of enclosing a parcel of land, dividing a parcel of land into distinct portions, or separating contiguous parcels of land

2. by adding the following to Section 2.02, immediately after the definition of "Restaurant":

Retaining wall: a wall designed to resist the lateral displacement of soil or other material.

3. by adding the following after Section 5.02I:

J. Fences and retaining walls - Fences and retaining walls may be constructed upon the issuance of a building permit, subject to the following restrictions and conditions:

1. Height limits - In the front yard, fences and retaining walls shall not exceed four (4) feet in height, except by special permit, as provided in this section. Other than in the front yard, fences and retaining walls shall not exceed six (6) feet in height, except by special permit, as provided in this section. The applicable special permit granting authority may issue a special permit to allow fences or retaining walls to exceed said height limits after considering the effects on safety, views and access to light and air, relating to the property on which the fence is located, neighboring properties and the Town as a whole.

The height of fences and retaining walls shall be the vertical distance of the highest point of the fence or retaining wall above the mean original grade of the ground undisturbed

EXHIBIT 54



Photography: David Morin

Town of Nahant Citizens Open Letter in opposition of Northeastern University proposed expansion at East Point, Nahant, Massachusetts

April 2018

[NAHANT_1330]

April 9, 2018

Mr. Joseph Aoun, President, Northeastern University
Board of Trustees, Northeastern University
716 Columbus Place
Suite 620
Boston, MA 02120

Dear President Aoun and the Board of Trustees,

We are writing to you from the town of Nahant, the smallest town in the Commonwealth of Massachusetts. As you are aware, Northeastern University has undertaken an ambitious expansion plan to construct an international Coastal Sustainability Institute at its East Point campus.

We respectfully submit to you, the attached Open Letter signed by 1,683 residents of Nahant representing over 58% of the eligible voters above the age of 17 years old. This presentation in which we outline our reasons for opposing this project is also accompanied by a letter from the Board of Selectmen for the town of Nahant who also oppose the proposed expansion.

No issue in Nahant history has raised such a unified response from citizenry and elected officials. This proposed expansion would create a significant impact to our residential community. This will also pose burdens on the existing infrastructure of the town that Northeastern University has not considered in developing their plans for this interdisciplinary educational facility. The citizens who have signed this Open Letter are not against education or science, and do want to see the Marine Science Center continue in a manner that is both environmentally conducive to the conservation land on which it operates.

Our non-profit organization representing the majority of Nahant residents request Northeastern University to reconsider its plans and look to begin a dialog with the Nahant Board of Selectmen and our organization. We trust you will discuss our concerns at your upcoming Trustees meeting.

Yours sincerely,

The Board of Keep Nahant Wild
P.O Box 30
Nahant, MA 01908
www.keepnahantwild.org

Mission: Keep Nahant Wild is a Movement committed to the conservation of Nahant's open space, marine and wildlife habitats, natural resources, conservation areas, and scenic landscapes now and into the future.

The Keep Nahant Wild Movement is a part of The Nahant Preservation Trust, Inc., an all-volunteer, not-for-profit, 501(c)(3) qualified-charitable organization, whose mission, like that of the Keep Nahant Wild, is to preserve our scenic landscapes, open spaces, historically significant properties and conservation lands

Town of Nahant
334 Nahant Road
Nahant, MA 01908
Telephone: 781-581-0088 Fax: 781-593-0340

April 6, 2018

President and Board of Trustees Members
Northeastern University
Boston, Ma.

Dear Mr. President and Members of the Board of Trustees:

The Nahant Massachusetts Board of Selectmen are writing to you as President and the Trustees of Northeastern University, regarding a matter that is a serious concern to both the Board and the citizens of our community. Specifically, we wish to vigorously oppose any expansion at your Nahant campus.

The Town of Nahant is a small seacoast peninsula, with a population of approximately 3,500, and has a geographic footprint of one square mile. Nahant is the smallest town in the Commonwealth of Massachusetts, with unique challenges due to finances, severe storm damage, and aging infrastructure.

At our March 5, 2018, Board of Selectmen meeting, the three members unanimously voted our opposition to any expansion of Northeastern University's Marine Science Center, and to write to you about this issue. Nahant has enjoyed a good working relationship with Northeastern for approximately 50 years, however this relationship has deteriorated over the past two years. We believe our relationship may completely dissolve due to the contemplated expansion at the Marine Science Center. With little advance knowledge, Northeastern has informed our community regarding this expansion, which in our opinion was poorly rolled out.

The proposed 60,000 sq. ft. building, with its roadways and lighting is not a fit for our scenic residential community. The construction has the potential to eliminate bird and wildlife habitats. A new entrance into the Marine Science Center will alter traffic flow. A proposed parking lot will increase traffic from cars, delivery

trucks, and shuttles, thus putting more strain on our infrastructure. Also, your proposed project jeopardizes the fiduciary position of Nahant, and may be detrimental to public safety, public health, and cause the inability to provide necessary services that the residents of this community deserves.

For more than 30 years, Northeastern has pumped seawater through the Marine Science Center. We believe there should be a study to determine the impact that the seawater system has had on the local ecology. The seawater project needs to be properly reviewed and the citizens need to be informed of any impact proposed.

In closing, we the members of the Nahant Board of Selectmen, strongly request you halt all expansion at your Marine Science Center, and study the proper impact of any seawater pumping system which impacts both the land and sea of our Town.

Respectfully submitted,

Francis Barile, Chairman

Chesley R. Taylor, Vice Chairman

Richard J. Lombard, Recording Secretary

EXHIBIT 58

NOTICE OF INTENT

pursuant to

The Regulations of the Massachusetts Wetlands Protection Act
and the
Nahant Wetlands Protection Bylaw and Regulations

Northeastern University Marine Science Center
Seawater System Upgrades
Nahant, Massachusetts

Prepared For:

Northeastern University
360 Huntington Avenue
Boston, MA 02115

October 2020



MASS GIS

ANNOTATED AERIAL PHOTOGRAPH

SCALE:1"=300'

N
W E
S

8 BLACKSTONE VALLEY PLACE
LINCOLN, RI 02865
(401) 334-4100

10 LINCOLN ROAD, SUITE 210
FOXBORO, MA 02035
(508) 543-1755

PARE PROJECT No. 17177.00 OCTOBER 2020

FIGURE 2

NORTHEASTERN UNIVERSITY
COASTAL SUSTAINABILITY INSTITUTE
NAHANT, MA

EXHIBIT 59

[NAHANT 1600]

Notice of Project Change/Phase I Waiver Request & Draft Environmental Impact Report

EEA # 16046

Submitted Pursuant to the Massachusetts Environmental Policy Act

NORTHEASTERN UNIVERSITY COASTAL SUSTAINABILITY INSTITUTE



Submitted to:
Executive Office of Energy and Environmental Affairs
MEPA Office
100 Cambridge Street, Suite 900
Boston, MA 02114

Submitted by:
Northeastern University
360 Huntington Avenue
Boston, MA 02116

Prepared by:
Epsilon Associates, Inc.
3 Mill & Main Place, Suite 250
Maynard, MA 01754

In Association with:
Payette
Pare Engineering
BR + A Consulting Engineers
LEC Environmental Consultants, Inc.
Nitsch Engineering
Skanska
Stephen Stimson Associates Landscape Architects, Inc.

Northeastern University
Coastal Sustainability Institute
Marine Science Center

November 15, 2019

Epsilon ASSOCIATES INC.

[NAHANT_1691]

Notice of Project Change/Phase I Waiver Request &
Draft Environmental Impact Report

EEA # 16046

Submitted Pursuant to the Massachusetts Environmental Policy Act

Northeastern University Coastal Sustainability Institute

Nahant, Massachusetts

Submitted by:

Northeastern University
360 Huntington Avenue
Boston, Massachusetts 02115

Prepared by:

Epsilon Associates, Inc.
3 Mill & Main Place, Suite 250
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Northeastern University
Coastal Sustainability Institute
Marine Science Center

Epsilon
ASSOCIATES INC.

November 15, 2019

MEPA 20 **Temporary and permanent impacts to open space should be identified, including impacts associated with the construction period.**

Temporary and permanent impacts to open space are identified in Section 3.5.

MEPA 21 **The DEIR should provide a comprehensive evaluation of all measures to reduce the amount of land alteration and creation of impervious areas. Measures to reduce land alteration and creation of impervious area include: reductions in building program, increased density to minimize project footprint, reduced roadway width and parking areas; use of pervious pavement for roadways and/or sidewalks; land banking of parking until warranted by demand; and supplemental landscaping or tree planting to mitigate impacts associated with the clearing.**

Measures to reduce the amount of land alteration and creation of impervious area are described in Section 3.2.

MEPA 22 **The DEIR should identify open space that will remain undisturbed and/or restored upon completion of construction.**

Open space areas are identified in Section 3.5.

MEPA 23 **The DEIR should consider placing a conservation restriction on a portion(s) of the site designated as open space, including areas containing wetlands, to ensure their permanent protection.**

The University will consider this recommendation by the Secretary, but is not prepared to make any commitment at this time.

MEPA 24 **The DEIR should identify any impacts of the project design or construction on the access easement to Lodge Park.**

The existing Lodge Park public easement will not be permanently altered as part of the Project; however temporary relocation will be required during a portion of construction. The University is committed to providing access to the park throughout construction. During the brief periods when access must be rerouted, an alternative route via the driveway along the east side of the Edwards Laboratory Building will be used, and the University will install signage the gate and along the path to make it easy for the pedestrians to follow.

MEPA 25 **The DEIR should provide plans that clearly identify proposed areas of cut and fill and areas that may require blasting. The DEIR should provide estimates of cut and fill volumes to achieve proposed site grades. If blasting is required, it should clarify whether blast materials will be processed on-site, and if so; should provide plans that identify the locations where this will occur.**

EXHIBIT 65

In The Matter Of:

In Re: Town of Nahant AnnualTown Meeting

Town Meeting

April 28, 2018

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68 Commercial Wharf • Boston, MA 02110

888.825.3376 - 617.399.0130

Global Coverage

court-reporting.com





Original File Town Meeting 4-28-18.txt

Min-U-Script® with Word Index

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MR. CLAUSSEN: You want it September?
VOTER: Sooner.
MR. CLAUSSEN: Well, we've got to push the Planning Board to have all these hearings. I'm not sure they have sufficient time to do that in that timetable. Because we're going to have a special town meeting anyways. That's coming. And where's Mahoven? We'll take care of that business about Sunday working. We'll take care of that with some restrictions on that, too — as well.
MODERATOR: Further discussion? Yes, Mr. Ward.
MR. WARD: Just to address the — the points raised by Bea. There — there are currently — I believe there are state statutes that deal with wetlands protection. This would be an amendment to our zoning bylaw, adding it as a zoning requirement in addition to the current state statutes that deal with wetlands and wetlands' protections, and correct me if I'm wrong. I don't know if the town has an additional wetland bylaw. I don't think that we do. I think we follow under the state statute. This would be incorporating what you see here into a zoning bylaw of the town of Nahant, which has a different effect.
VOTER: (Indiscernible).

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MR. WARD: Correct. Yes.
MODERATOR: Further discussion? Yes?
MS. MARIE: Paulette Marie (phonetic), 16 Harbor View Road, Nahant. So, I apologize. Shame on me. I didn't get to the Planning Board hearing on this proposed zoning bylaw, and I hope to attend any future meetings, but I — I wish to sort of caution our citizens. This is a very important issue, the wetlands in this town. All of the land in this town is very important. Amendments or additions to the zoning bylaw are also very important, and they often take time to craft, and concern that a public hearing was held and this article must be dealt with either at this meeting or within six months, while well meaning, may mean that something is still too rushed and crafted and comes back to us yet again from the attorney general's office or has other deficits that a more measured process to review this much of a new bylaw might be necessary. So, I think — and — and I could be wrong. It's been a number of years since I've had the privilege of serving the town on the Zoning Board of Appeals or the Planning Board, but my understanding is if there are really significant problems with this proposed bylaw, that it could in fact be withdrawn, corrected, and then resubmitted for a new hearing process. I could be wrong.

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And if it were — so, I think that there are other options but I'm not sure that rushing to enact something that has significant problems is the right thing to do. Thank you.
MODERATOR: Thank you. Further discussion?
MS. CONLIN: Me?
MODERATOR: Yes.
MS. CONLIN: Molly Conlin, 171 Willow Road. Call the question, please.
MODERATOR: The question has been called for. When the question has been called for, we vote on the motion to call the question. It's a two-thirds majority vote. There's no debate upon it. There's no reconsideration. So, those in favor of calling the question at this time, signify it by saying aye.
VOTERS IN FAVOR: Aye.
MODERATOR: Those opposed no.
VOTERS OPPOSED: No.
MODERATOR: Those opposed, please stand. You folks in the doorway, are you opposed or just in the doorway?
MR. COSTIN: I'm not opposed. I'm standing here because I want to speak.
MODERATOR: I understand that, and whether you can or not will be determined by this vote.

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MR. COSTIN: Yes.
MODERATOR: So, 3, 5, 6.
FEMALE: The question hasn't been voted on.
MODERATOR: 8, 9. I get 9. So those opposed 9. Those in favor of calling the question, please stand. Tom, we're going to take it as you're not voting in favor of it because you — you want to talk so — I — relax. You're all right. I'm not counting you. I count 112. The motion — the call — the question has been called for. Now the question is — and we now vote on the issue. The issue is whether to recommit the motion — recommit the article to the Planning Board as discussed earlier. Those in favor of recommitting the zoning article changes to the Planning Board, signify it by saying aye.
VOTERS IN FAVOR: Aye.
MODERATOR: Those opposed no? The ayes have it. Thank you. Yes. We just took your thing you were going to discuss away but — we're always glad to hear from you.
MR. COSTIN: Well, Mr. Moderator, I — I came up and stood up in the line a little, probably a little too late. I did want to speak on that — that last issue and I still want to speak on that last issue.
MODERATOR: Well, Tom —
MR. COSTIN: My name is Thomas Costin. I'm a

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resident of 54 Maolis Road. I have been in town for fifty years. I have been in government, an elected official, since age twenty-one. Now at ninety-one and seventy years' experience in government, I think we should make a positive point here that the vote we took on the last motion is for one very important point, and the reason why most of the people are here today. We do not want the Board of Selectmen or any town agency to pass anything in this town that's going to favor Northeastern University to take our green lands, our blue lands and our wetlands away from the town of Nahant people.

MODERATOR: Thank you, Tom. Well, thank you very much. I allowed you to speak on it that much but unfortunately, you're out of order.

MR. COSTIN: Oh, I know that. But you can never be out of order when you stand up to speak for what's the beauty, and the future and the history of this town to let anyone, big or small, come in here and try to take away the history and the beauty and the sunrises coming over Eastern Point.

MODERATOR: Thank you, Tom. That was inspiring. We are now moving on to the next article.

FEMALE: Okay. This — point of order, Mr. —

MODERATOR: It was inspiring and we are now moving

Page 90

on to the next article. Next article. Now. Moving on.

FEMALE: This is just a point of order. That's all.

MODERATOR: A point of order is something different than what you are about to say. So — we've got to move on to the next — if it — if it relates to the next article or if you can't hear in the back or something like that, that would be fine. But we can't just run off and keep on going when we're already solved the issue. So, the next article is — yes? When it's put in, then you can discuss it. Okay. Mr. Vanderslice. Thank you very much.

MR. VANDERSLICE: Wow. And that is a tough act to follow.

MODERATOR: Sure is.

MR. VANDERSLICE: I move the town vote to add Article 17 to the Town of Nahant general bylaws, entitled Stretch Energy Code for the purpose of regulating the design and construction of buildings for the effective use of energy, pursuant to Appendix aa of chapter 115 of the Massachusetts Building Code, 780CMR1.00 et sic, the Stretch Energy Code, including future additions, amendments and modifications thereto with an effective date of July 1, 2018, a copy of which is on file with the

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town Clerk, or take any other action relative thereto.

MODERATOR: Seconded by Mr. Manadee.

MR. VANDERSLICE: And let's see here, so it — if you want more, it begins on page 123 of the book, and I would just like to note that this is — this is a rare opportunity for us to realize a double benefit from passing this article. Not only do we get to do right by the planet, but we have substantial financial benefits that will come out of this as well.

MODERATOR: Excellent. Mr. Chairman.

MR. MANNING: This is just a point of information. Back — voted it a year ago, we — I initiated the Green Community committee with the Board of Selectmen, and they have done a bang-up job. They have done a tremendous amount of work, and I just want to recognize them. Diane Monteith is our chairman. Ellen Goldberg is our vice chairman. Nick Bokron, Margaret Alexander, Lisa Haley, Chet Hopkins, Nicole Goguen, Abigail Roberts, Johnny Zimmerman-Ward, and Teri Motley. I think they deserve a real round of applause. They've done an unbelievable job, and I — I urge you to pass this Stretch Energy Code. Thank you.

MODERATOR: Well, any further discussion on the motion? Hearing and seeing none, those in favor of the

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motion, signify it by saying aye.

VOTERS IN FAVOR: Aye.

MODERATOR: Those opposed no?

VOTERS OPPOSED: No.

MODERATOR: The ayes have it. Article 30, Mr. Fulghum.

MR. FULGHUM: So a little preface for Articles 30 and 31. They're both articles that deal with instances where the town has not adopted the local option on State General Law related to automatic sprinkler systems. So, Article 30. I move that the town vote to accept the provisions of Mass. General Law chapter 148, section 26h.

MODERATOR: Seconded by Mr. Ward. Further discussion on the motion? Yes, sir?

MALE: I was having trouble hearing the motion because there's so much noise out in the lobby. Is there anything that can be done about that?

MODERATOR: Could you repeat the motion? Thank you.

MR. FULGHUM: Okay. I'll repeat the motion. I move that the town vote to accept the provisions of Mass. General Law chapter 148, section 26h.

MODERATOR: Further discussion on the motion? Seeing and hearing none, those in favor signify it by

EXHIBIT 70

Preserving East Point as a Wildlife Preserve

We would like to share with you the Board of Selectmen's plan to preserve East Point as a Wildlife Preserve.

We preface our remarks with acknowledgment that the Town addressing the health, safety and security of our residents is our top priority at this difficult and uncertain time. It is our most important priority, and we, like many other communities, have enacted a number of measures in an effort to keep our community healthy and safe. One of the uncertainties resulting from the pandemic is how Government will operate moving forward. Currently, the Annual Town Meeting is scheduled for May 16, 2020. Until advised otherwise, we need to prepare for the Meeting as we would in any year.

It is conjunction with this Town Meeting that we initiate this action. We are at a tipping point with the projected environmental impact to East Point, and we believe that now is the time to act.

* * * * * *

Taking the First Step in Saving East Point Wildlife Preserve



Today we announce that the Nahant Board of Selectmen is taking our first concrete step to permanently save the open space, woodlands, beaches and meadows making up the Wildlife Preserve at East Point. We have made the decision to apply to Nahant's Community Preservation Committee for funding to protect Nahant's largest unprotected contiguous open space in perpetuity.

In 1966 the Federal Government deeded to Northeastern University the approximately 21 acres of land at East Point along with what is now the Edwards Building Marine Science Center and its parking lots. Northeastern paid nothing for the property. The property had been declared surplus and was gifted to Northeastern as a public benefit. Since that time the University has served as a steward of the land. It has dedicated and left open much of the property as an ecological and wildlife preserve. From the first Northeastern welcomed the public's access to and use of the preserve. It has trumpeted the beauty of the preserve in its literature and on its website, and for more than fifty years the Town and its residents have used the this property for passive recreation, have accessed the wooded areas for hikes and bird watching, have picnicked in the meadows, have climbed the rocky ledges and cliffs, have sat and played in the sand of its beaches, have swum and fished off its coast and have enjoyed the simple pleasure of the scenic beauty of the property. Indeed for more than fifteen (15) years an observatory, established by a local resident, was perched on the shoulders of Murphy Bunker delighting and educating young and old about the solar system

Unfortunately, Northeastern University is unwilling to commit to the permanent preservation of the property. To the contrary, Northeastern University is committed to an entirely different course, a course which will affect East Point's open space forever. Protecting the "Wildlife Preserve at East Point" for Nahant in perpetuity is essential. We must save this diverse eco-system and the habitat it provides for birds, mammals, amphibians and insects. We must ensure our residents have access to the trails, the coastline, the rocky ledges, the expansive view and importantly, the continued connection to Lodge Park, the eight plus (8+) acres of protected parkland to the east and south which is owned and cared for by the Town of Nahant. (We have relied on Northeastern University's dedication and stewardship of the property over this more than fifty year period, and have included it in our Open Space plans, and together with Lodge Park, have treated it as one contiguous open space.)



We must mitigate the impact of climate change, and by saving the Wildlife Preserve at East Point we can mitigate the impact of heat, storms, carbon emissions, and habitat loss.

It is for these reasons we have decided to move forward to actively preserve the Wildlife Preserve at East Point by acquiring the property rights necessary to do so (and because Northeastern University has threatened to close access to Canoe Beach, we also intend to confirm the right of access to and use of Canoe Beach as part of any such acquisition).

Our only goal is to save the Wildlife Preserve and rights to Canoe Beach. Northeastern University's current (and 50+ year history of) use and activities are not to be disturbed. Under our plan Northeastern University will retain ownership of the remaining land, their existing buildings, the bunkers themselves, their parking areas, their water intake lines and pump house, and all of their other existing improvements on and to the site. Northeastern would be permitted limited rights in the Wildlife Preserve itself, to a continued use for non-conflicting, non-invasive ecological studies and the like.

While we remain open to achieving a mutually acceptable agreement with Northeastern University, we have decided to initiate a process that would allow for the acquisition of the necessary property rights to the Wildlife Preserve and Canoe Beach that we believe are critical, through the power of eminent domain.

How does eminent domain work and how long does it take?

A Town can take a piece of private property for a public purpose from an owner through the power of eminent domain. This power would apply whether the Town moved forward to acquire a fee interest in the property or a conservation restriction or easement rights. The purchase price must be the property's fair market value. Thus, our process will begin with an appraisal of the fair market value of the property rights that we intend to acquire. Through discussions we have had with experienced real estate appraisal professionals, we have looked carefully at the cost to acquire the property rights described above, and we believe, given Nahant's Zoning Bylaws, that a reasonable estimate of the value of the Wildlife Preserve at East Point is in the neighborhood of One Hundred Fifty Thousand ($150,000) Dollars per acre. We are in the process of completing the formal professional appraisal that is a predicate to the eminent domain process.

In order to insure the availability of the funds needed to support the acquisition or taking of the property interests in the Wildlife Preserve and Canoe Beach, we have planned a two-pronged approach. First, to apply to Nahant's Community Preservation Committee (CPC) for a grant of One Million Five Hundred Thousand ($1,500,000) Dollars, which will go towards funding a portion of a purchase price of up to Four Million ($4,000,000) Dollars and an additional Five Hundred Thousand ($500,000) Dollars for legal and associated costs. Second, to cover the remaining balance of the purchase price by accepting donations from private donors. The grant, if approved by the CPC, would authorize the Town to borrow One Million Five Hundred Thousand ($1,500,000) Dollars to be repaid out of Community Preservation Act funds over a thirty (30) year period. (Because the Community Preservation Act provides for a State match from a dedicated fund, the actual amount contributed from Nahant taxpayers will be a percentage of the $1.5 million.) (Please refer to Appendix A.)

If the CPC approves and recommends the grant, the grant would then need Town Meeting approval. (If approved and recommended by the CPC, we would anticipate bringing the article to the Annual Town Meeting currently scheduled for May 16, 2020. As a borrowing article, a 2/3rds vote of Town Meeting would be required.) The grant would be subject to the following conditions, all of which would need to be satisfied before any of the One Million Five Hundred Thousand ($1,500,000) Dollars would be borrowed:

- The Town would have voted to authorize the Board of Selectmen to acquire the property rights by negotiation or by an eminent domain taking.

- The Town will have received from private donors a cash donation for the greater of (x) Three Million ($3,000,000) Dollars (i.e. a 2-1 match) or (y) the amount in excess of the $1.5 Million Dollar CPC grant funds to pay Northeastern the negotiated acquisition price, or in the case of an eminent domain taking, the *pro tanto* (the amount of money to be paid to Northeastern University based on the Town's appraisal of the fair market value of the property interests being taken) established by the Board of Selectmen. (We strongly believe that this condition is achievable and will be satisfied within weeks of an affirmative Town Meeting vote.)

- In the case of a taking through the power of Eminent Domain, the Board of Selectmen shall have voted in fact to take the property rights described above and to pay Northeastern a *pro tanto* of no more than Four Million ($4,000,000) Dollars, or if the Board of Selectmen elects to pay more than Four Million ($4,000,000) Dollars, then the Town will have first received in cash such additional funds as to make up the difference.

These conditions make it clear that the Board of Selectmen cannot and will not authorize the borrowing of the $1.5 Million Dollar CPC grant funds until both Town Meeting approves the acquisition or taking and the Town has received private donations of at least Three Million ($3,000,000) Dollars, and, if necessary, such additional amounts as may be needed to pay the negotiated acquisition price or *pro tanto*, as the case may be. Any funds received by the Town and not expended in the acquisition or taking will be returned to the CPC general or open space reserve.

If the Community Preservation Committee and the Town Meeting both vote favorably on the grant, then the Board of Selectmen at the appropriate time would schedule a Special Town Meeting to seek a vote authorizing the Board of Selectmen to acquire the property by negotiation with Northeastern, by gift, or through the power of eminent domain. That vote again would require a 2/3rds vote of the Special Town Meeting. That Special Town Meeting vote simply authorizes the Selectmen to acquire the property rights. It does not mandate the Selectmen to act. The Selectmen, therefore, must also vote to acquire the property through the power of eminent domain if the Selectmen intend to proceed in that manner. If at the Special Town Meeting and the Board of Selectmen vote to acquire the property rights by eminent domain, the Town of Nahant needs only to record the order of taking at the Essex County District of the Land Court and/or Registry of Deeds in order to complete the purchase of the property rights. Within a short period of time thereafter, the Town will write Northeastern University a check for the *pro tanto* amount to acquire the property rights in the Wildlife Preserve at East Point and Canoe Beach.

Thus, the acquisition can happen in a matter of months. Northeastern University, however, may go to court with a lawsuit saying the *pro tanto* amount is insufficient and that an appraiser that they have hired has determined that the fair market value of the property rights is more than the *pro tanto* amount they have been paid. (Notably, the valuation date is the date that the taking order is recorded at the Registry of Deeds or the Registry District of the Land Court as the case may be.) Northeastern University has three years to file a lawsuit against the Town of Nahant after the taking order is recorded to protest the fair market value. This potential disagreement over the value of the Wildlife Preserve would need to wind its way through the court system. Eventually (perhaps

another two or three years later), either a judge or a jury will have the final say on the fair market value.

Why use Community Preservation Act funds?

In 2004 the citizens of Nahant voted to adopt The Community Preservation Act and in so doing added a three (3%) percent surcharge onto our Town excise taxes to fund certain defined areas of need allowed under the Community Preservation Act, affordable housing, historic resources, open space and recreation. The use of Community Preservation Act funds for this purpose, the preservation of open space is exactly what was intended by the Act. As noted earlier, under The Community Preservation Act the State also matches a portion of the Town's funding (this last Fiscal Year the State matched the Town's funding at an approximately Sixty (60%) percent rate). By funding the acquisition out of Community Preservation Act funds, we will not affect the Town's operating budget or your tax rate in any way. By bonding the One Million Five Hundred Thousand ($1,500,000) Dollars grant over a Thirty (30) year period, the acquisition cost will be spread out over time and will allow Nahant's Community Preservation Act program to continue to have funding for other qualifying projects.

While the cost of preserving the Wildlife Preserve at East Point is significant, we know we must save it for future generations of Nahant residents, open space, wildlife, conservancy and safe-keeping.

Appendix A

1. This CPC borrowing authorization puts the Town in a strategic position to pursue Eminent Domain at a later date. It does not authorize an Eminent Domain taking; it simply provides funding to do so should the Town vote to take. The actual taking requires a separate vote of the Town.
2. This CPC borrowing has no effect on operating or capital budgets or on the tax rate, as it is funded through the CPC which is outside of budgets and has its own funding sources.
3. From a purely financial perspective this is a sound investment offering a 500% return.

Town CPC investment	$ 900,000	CPC borrowing authorization
State CPC match	600,000	
Private donations match	3,000,000	
Total	$ 4,500,000	

EXHIBIT 71

[NAHANT_1936]

Nahant Town Hall
334 Nahant Road
Nahant, MA 01908
Tel. (781) 581-9927 Fax (781)593-0340

August 21, 2020

Dear Nahant Citizens,

The following pages, "Preserving East Point as a Wildlife Preserve, Second Statement of the Nahant Board of Selectmen," compares the cost of executing Eminent Domain to the cost of allowing Northeastern to develop East Point. This document demonstrates that it will cost Nahant's taxpayers less to fund eminent domain than it will to host an expanded Northeastern University. In other words, in the long run your tax burden will be less if East Point remains undeveloped via eminent domain.

As a reminder, the voters of Nahant designated all of East Point as a Natural Resource area nearly 30 years ago by a Town Meeting vote. Building in Natural Resource areas is not permitted (except for recreational buildings) by Nahant's Zoning Bylaws. However, Massachusetts' "Dover Amendment" allows nonprofit educational institutions like Northeastern to circumvent certain local zoning. While we would argue otherwise, Northeastern is proceeding to override our Natural Resource District protections.

There is no escaping the fact that the largest development in Nahant's history, in a Natural Resource area by a university that does not pay real estate taxes, will come with a cost to the Town.

The logical question is: What will it cost Nahant to host an expanded Northeastern? A financial assessment has been performed that sets the costs over 40 years as $17-$22 million. Therefore, if this expansion is not stopped, the best case scenario is that taxpayers of Nahant would be paying Northeastern's unreimbursed $17M over the next 40 years. $17M over 40 years works out to approximately $250 per year per household.

The Board of Selectmen (BOS) has submitted an application to the Community Preservation Committee (CPC) and the CPC voted to advance this application to Town Meeting. With the guidance of experienced professionals, the BOS has determined that the total budget for eminent domain is $4.5M, which provides ample founds for both the fee paid to Northeastern and any resulting legal costs. Most of this $4.5M will be paid by private donors and State match, so Nahant taxpayers' contribution would be a total of $1.7M over 30 years (which works out to $35 per year per household). It is important to remember that this $35 per year per household will come out of the existing Community Preservation Act funds and thus does not increase real

Nahant Town Hall
334 Nahant Road
Nahant, MA 01908
Tel. (781) 581-9927 Fax (781)593-0340

estate taxes nor draw from the Town's general funds. Over the 30 year term of the bond, the annual payment will consume 17% of the CPA budget, leaving 83% of CPA budget for other projects in Nahant.

Another consideration is that if property values decrease in the residential areas near Northeastern as a result of the expansion, the rest of the Nahant's taxpayers would need to make up the difference in lost property taxes, potentially adding additional tax burden to Town residents beyond the neighborhoods surrounding East Point.

The facts are clear: It will cost you more on your taxes to host an expanded Northeastern than taking part of the property by eminent domain. Would you rather fund $35 per year from your existing tax bill to save East Point forever or add $250 per year to your tax bill so Northeastern can develop East Point?

All of these financial assessments take no account for the incredible beauty of this special place. East Point is the last undeveloped headland between Boston and Maine and should be preserved for future generations of people, birds, and animals. Nahant has very limited open space and East Point is the largest privately owned Natural Resource area in Nahant. It will soon be developed unless you use your vote to prevent it. You can save this place forever or you can watch it be developed. Nahant voters, the simple choice is yours:

Save money and save the place

OR

Lose money and lose the place.

Sincerely,

Joshua A. Antrim

On behalf of Nahant Board of Selectmen

EXHIBIT 74

[NAHANT_1966]

Report and Recommendations of the Advisory and Finance Committee



Town of Nahant Massachusetts

Annual Town Meeting

Saturday, May 15th, 2021 12:00pm

ARTICLE 16

ARTICLE 16: To see if the Town will vote to raise and appropriate a sum of money for the purchase of United States Government property known as Launcher Area--Nike Ajax Site B-17, Nahant, Massachusetts, in accordance with, and by acceptance of the applicable statutes providing for said purchase, and to determine whether the money shall be provided by raising and appropriating, appropriation from available funds in the treasury and/or by borrowing under authority of Chapter 44 of the General Laws of the Commonwealth of Massachusetts or take any other action in relation thereto.

MR. MODERATOR. The Chair would like to say with respect to these Articles on acquiring property or easements or abandoning properties or easements, a two-thirds vote is required. Mr. Cushing.

MR. CUSHING. Motion: I move that the Town vote to indefinitely postpone action on this Article.

MR. HART. Seconded.

MR. MODERATOR. Seconded by Mr. Hart. Any discussion? Doctor Famulari.

DR. FAMULARI. What happens to this land when the Town refuses?

MR. MODERATOR. Well, I assume the state will then dispose of it in accordance with the usual procedure. I believe the Town is offerred the first and then after that I think it is offerred to some other public bodies and

finally it may be put up for auction to private developers. I believe that's about the sequence.

Any further discussion? If not, will those in favor--Mrs. Alexander.

MRS. RUTH ALEXANDER. I am sure that all the Townspeople in Nahant wish that this area could be left, but we are all afraid of what would happen if it is left for us to own and then all of Boston, Somerville, Chelsea, etc. occupy it because we would have to leave this wide open to the world as the Advisory Committee has told us.

The thing that occurs to me is have we given this enough real consideration? If, in the first place it is a fact that we are bothered here in Nahant with our beaches because Somerville, Boston, Chelsea, etc. have used up all their land where people can play and they are overcrowded and so they have to go a little farther afield and come to Nahant and other places.

Now, if we as Nahanters use up the little extra land that we have, which is mighty small according to our population, it never could be what is considered by people of technology sufficient for the freedom of children in particular.

Have we given this enough thought? I just wondered if we aren't giving up something that in a few

years we'd be pretty sorry about.

Now, as for the crowds of people coming down here, certainly we don't want that, but have enough people gotten together about this thing and do we know that this thing cannot be figured out? I think with our parking regulation certainly there can't be too many people that come and go there because they aren't allowed to park anyway and the out-of-towners would have the same privilege that we have which would be that you could walk to this place and enjoy it. And this would be fine.

And you know and I know that if picnicking is restricted, if the various things are restricted, which it is possible for us to restrict, this isn't going to look as attractive to a lot of people because most people don't like to just go walk somewhere.

And I just feel, I don't know about the legal aspects of this, I don't know what our possibilities are but what I wish is that some committee of volunteers, if it was possible for some committee of volunteers to figure out how we can keep this and have it a beauty spot and have our walk around the rocks continued as it used to be around this area .. After all, we have it. It's in our Town and are we quite willing to just give it up? Isn't it just possible for us to havethis land and then we decide that

this is absolutely impossible, can't we then give it back to the Government?

I don't know about the law, but I just think it's awfully too bad that all of this happens in such a few days when it is such a potential place. I think many of us have been to Monterey in California and I think, also, you can agree, with this place arranged with trees, Town for call it whatever it need be, if it is carefully planned it could be something that we could be awfully proud of, awfully useful to us, better for all of our children. These are the ones that it means most to to have some place that they can go off and a small woods like this would be to them a great forrest.

I know when I was growing up just having a little woods that I could go to myself, not in the company with others but as you wish to go, it makes a tremendous difference to the whole - oh, I don't know, the whole so of a child.

And I just wondered is there somebody here who can suggest some way that we can be given a little time on this and we don't let this slip through our hands because we haven't thought of it carefully.

I think this is certainly a cheap price for a land of this caliber. I know there are difficulties. I

know the Police Department are horrified but can't we as a Town, aren't we big enough, can't we get together and form some way of doing this and doing it well in cooperation with the police and have something we'll be proud of and just mother? (APPLAUSE AND CHEERS.)

MR. MODERATOR. Any further discussion? Mr. Mooney speaking on the motion to indefinitely postpone action under Article 16.

MR. MOONEY. Mr. Moderator: I just wanted to ask a question or a few questions as far as the land in itself is concerned. When the Government took the land from the Town of Nahant there wasn't any restrictions on the land in itself and I can't understand why, when they want to give it back to us, they give us restrictions as far as why it has to be used for a certain thing when they took it from us -- that wasn't the case?

MR. CUSHING. Bought it.

MR. MOONEY. They bought it?

MR. MODERATOR. They didn't buy it from the Town. I believe they acquired it from a private individual.

MR. MOONEY. The second question was the fact, is there any time limit as far as making this decision is concerned in giving them an answer?

MR. MODERATOR. Mr. Kelley, would you answer that

question, please?

MR. KELLEY. The answer is the Government wants to know right away. They wanted to know five days after they offerred it to us but we told them they would have to wait until this month and we stalled them since about last August. They want an understanding and it is understood that we will give them an answer this month.

MR. MOONEY. In other words, Mr. Kelley, if this were referred to a committee, we would not have time to act, is that correct?

(A dog howls outside Hall.)

MR. MODERATOR. Charley, those are your props for Article 56. (APPLAUSE AND LAUGHTER.)

MR. KELLEY. I might say, Mr. Moderator, nothing is going right for me today. (LAUGHTER.)

MR. MODERATOR. I think the answer to your question, Mr. Mooney, is that there is very little time left to the Town to make a decision one way or the other.

Do you have another question?

MR. MOONEY. Mr. Kelley, do you know if this is given to either private developers or non-profit organizations, would the same restrictions be put on them as they are on us right now?

MR. KELLEY. Mr. Moderator, there has been some

good questions raised here and all of them have been raised by the members of the Board of Selectmen, of the Advisory Committee, of the Planning Board or the Conservation Commission, all of which have met on this matter I think twice, at least twice. We have been studying it and it's been under discussion many times for the past two or three years.

If the Town does not buy the land from the Government, and the Government will dispose of it through General Services Administration, chances are they will dispose of it, too, by sealed bids. Now, whoever buys the land will be restricted only by the Town zoning and building by-laws. And they are that this area is zoned for 30,000 square foot house lots and single family houses. So, there are approximately 28 acres up there and I would estimate that the very most you could have would probably be 23 to 24 single family homes.

The other point that should be made is this: when this land first became available or we learned it was going to become available, we all thought, myself probably most of all, that it would be just wonderful for the Town to acquire it. It's a beautiful spot. The view is breathtaking. No question about it. However, as you get deeper into it, there are many factors you must

consider. 1) the area is completely honeycombed up there. Not completely but generally with underground works. These are very dangerous. There is one tunnel in there that must be 1,000 feet long in pitch darkness, the various services underneath the open manholes, and so forth. Where the old Nike missiles were kept I think there are three sites there that go down 35 feet. These will have to be made safe before anyone would be permitted in there. And in order to make them safe, to my way of thinking, would require an expenditure of a great deal of money. If the Town didn't make it safe, we would be liable for a very serious court action if someone is hurt or injured.

The most desirable area is where the old Henry Cabot Lodge home was on the farthest point up. This is completely hardtopped and this is where the underground Nike sites are. And I have just learned from talking to General Services yesterday that the Navy Department is interested in exactly this area. They want approximately three acres of it. All well and good.

The second factor that really concerns us is the fact that we would have to use this for park or recreational purposes. It would have to be open to any citizen of the United States. The physical job of policing the area, I think, would be very costly particularly in

the summer. And if it is open to everyone, I think we are going to have a real, we have a serious traffic problem now, God knows -- I think we would have it multiplied ten times.

As far as saying that you can't park, I don't think you are going to get away with that sort of thing. The whole theory of the Federal Government in offering this land to a municipality is that it will be used as recreational area for everyone and I don't think you are going to be restricted in any way, shape or manner. The Department of Interior who has approved it for recreational use has said so in a letter.

So, you have an initial expense of approximately $30,000.00. How much it would cost to make the area safe, I wouldn't even dare guess. But, I would say that you could add another $30,000.00. How much it would cost to police it properly during the summer, I'd say two or three policemen to keep that area properly policed.

Thirdly, you just don't buy it and leave it the way it is. The Federal government requires you to submit--if they are going to give it to you for half price--you have got to submit a program to them showing your plans for development and you are expected to follow them through.

So, you are going to have initial expense to buy

it, initial expense to make it safe, a constant expense to police it, and a constant expense to bring it up to a real recreational area which the Government expects you to do. And then, of course, the constant expense of maintaining it.

As much as it would be nice for the Town to have it, it boils down to this: can we afford it? It is my opinion, personally, I believe it is the Board of Selectmen's opinion and the Advisory Board's opinion that this is a luxury and an expense the Town is not prepared to take on.

So, I hope that we will indefinitely postpone it.

MR. MODERATOR. Any further discussion? Mr. Chamberlin.

MR. CHAMBERLIN. Mr. Kelley, I want to compliment you. That was one of the best, most logical speeches you ever made. (LAUGHTER AND APPLAUSE.) And he's made a lot of logical speeches, too.

Ladies and genelemen: Mr. Kelley said it all. It's not the first cost, it's the unlimited expense. These are not too much when he said $30,000.00 or $50,000.00 or $100,000.00. I can attest myself. I say to put that in shape from what I have seen of it would cost you $200,000.00 and don't think that is too high.

He said it all in one word or one sentence: it's a luxury this Town cannot afford at this time, and I hope you will vote "no."

MR. MODERATOR. Is there any further discussion? Miss Hammond.

MISS HAMMOND. My father and I about five or six years ago -- want me to come down there?

MR. MODERATOR. No, I can hear you.

MISS HAMMOND. My father and I wrote about five or six years ago, when the Army was not occupying that site, to Washington and to Battle Creek to see if it could be used as an air raid shelter. Anybody thought anything about that at all?

MR. MODERATOR. Mr. Kelley, do you care to answer that at all?

MR. KELLEY. The answer is yes, Miss Hammond. We thought about it very seriously in 1960 and 1961, I believe. As a matter of fact, Mr. Cadigan, who was then on the Board of Selectmen at that time, went to Washington-- completely hopeless trip-- (LAUGHTER.) --after he got down there, he found he should be somewhere down in Ohio where Civil Defense was down there.

To be serious about it, it would be an air raid shelter, if we had air raids as we had in World War II. It

would be a fall-out shelter in a case of an atomic attack. We had some people from Washington and from the Commonwealth from Civil Defense. He went back to the days of Leon Henderson and the O.P.A. And they went through the Town and said it would be wonderful for a fall-out shelter. They have said if this was a target attack, this would be a prime target area and you wouldn't have to be worried about fall-out. (LAUGHTER.) This is serious.

What really shook me up is after we got through walking through the tunnel he said, "Leon, what about the tidal wave." He said, "What tidal wave?" He said, "Why, you'll have 300 feet of water in this Town if anything drops within 20 or 30 miles.

So, I could see all of us in the tunnel washed right out.

Here is what it boiled down to. This would be wonderful, we'd like to see this for a civil defense area but the Government will not, has not now and has not been and has not now any provision in its laws to pay you or give you any assistance for acquiring land for civil defense use. They will give you some money for equipment for stretcher and so forth, bandages and supplies. But they won't give you a penny for civil defense used for acquiring land. So, we dropped the civil defense angle of it. And

if you want to know my thinking, I concur with the civil defense people.

The Federal government, as a matter of fact, hasn't got any plan today for civil defense and neither does the Commonwealth. And let's face it, I don't think they are ever going to come up with one.

So, if we bought it for civil defense use, there again, we are going to have to spend $30,000.00 to get it and if you start fixing those tunnels up so we can get the whole Town in there, boy-- (LAUGHTER.) --Steve is too low.

MR. MODERATOR. Any further discussion? Yes, sir, Mr. Platt.

MR. PLATT. If restrictions were put on that land now for the site of that land, would the restriction still hold good if--

MR. MODERATOR. You mean if zoning restrictions were put on the land?

MR. PLATT. No, if the Government restrictions were put on the land now and given to us, why wouldn't those same restrictions hold good?

A VOTER. Because they are selling it to us at half price.

MR. MODERATOR. Would you answer that, Mr. Kelley?

MR. KELLEY. First of all, the appraised value of the land is set by the Government and is $49,900.00 or something like that. And if we buy it, it will be for park and recreation purposes and we can buy it at fifty per cent of the appraised value. That is where the figure comes from.

The theory behind the Government's thinking, from what I imagine, what they have told me, is they would be happy to sell it for half price if we are going to use it for recreational purposes. In the overall picture, they think that would be a good use. However, if we don't buy it and it goes to a private developer, they will first of all want to get at least $60,000.00 for it. And if they sell it to a private developer, there will be no restrictions on its use by the Government but the Town has its restriction built in in our zoning by-law.

Does that answer the question, Mr. Platt?

MR. MODERATOR. Thank you, Mr. Kelley. Any further discussion? The question is called for. This gentleman here.

MR. MAHONEY. Mr. Kelley, I'd like to ask a couple of questions on land and also to our attorney.

Mr. Kelley stated the property is assessed for $60,000.00. Seems to me I would ask the attorney if there

is not a law or at least cases, particularly recalling one in New Jersey wherein the Federal Government took property from a Town such as ours andwe lost taxable land. Subsequent, the land became available for sale and when we computed the lost taxes over the period of time in which the property was held by the Federal Government, the Town was able to recoup lost taxes on this basis.

As far as the land itself, I am not convinced of the possibility of Town use. However, I think possibly we have a claim at this time before it turns into private hands if it is not going to stay with the Government.

I also would offer that possibly the General Services putting apparently pressure here. Certainly isn't going to be done, this sale isn't going to be consummated in five days or neither is it going to be consummated at the end of this month.

I suspect, being one who is interested in the Town possibly one day a year, that all these questions have been answered. However, I would like to suggest that possibly if we may look into such a case if it has not been brought to the point. The point is that land taken by the Federal Government, and which was taxable land. And the point was made that this was private property which I assume has a sizable tax, we should recompute the tax loss

on this property for the time the Federal Government had it and present a bill at this time. Maybe we can get the land for nothing, if you want it.

But, I feel, and Mr. Sigourney would want to look this case up, but I think there is a case in New Jersey that brings this point. Maybe the senator or the reprsentative has to present a bill to Congress to carry this through. But, I'm sure the law books will write this case up if it is looked into.

MR. MODERATOR. Is there any simple answer to that question? Mr. Kelley, for the purpose of answering a question.

MR. KELLEY. There are so many, I don't know where to start. First of all, it is not assessed - it's appraised, and that isjust a minor point. It is appraised for $60,000.00 by the Federal Government. What it is really worth, I don't know. What it would be assessed for if it went on the tax rolls I don't know. There has been no pressure whatsoever from General Services Administration upon the Town or any of its officials. If I gave you that impression, it is erroneous. It recently has been most cooperative and helpful with us. Congressman Bates has been most helpful and prior to him Congressman Lane. G.S.A. would like to have an answer as soon as possible. By

I meant I think we've put them off rather than call a special Town Meeting, we have put them off until this Annual Town Meeting. I think it only fair we give them an answer.

The question on taxes, the Federal Government acquired the land from the estate of Henry Cabot Lodge, Sr. and Harmon Elliot, I believe.

MR. MODERATOR. That's right.

MR. KELLEY. And Mr. Mahoney raises a point that I am unprepared to answer. I am not aware of any legislation that permits the Town to recover money in lieu of taxes from the Government. I think that is something we should look into. I think it is something that we will look into. I, for one, will. I'm sure the Board will.

I don't think if the Government disposed of it that we will lose anything because the fact of the matter has been that they've had the land for the last twenty-two years. But, I know of no provisions on the books now that will allow us to recover. I think probably what happened in New Jersey is a special act was probably passed by the Congress to allow this town to recover money. We can try that. How far we would get I don't know but it is worth a try and we shall.

MR. MODERATOR. Any further questions?

A VOTER. Is there any idea about the Town buying it an reselling it? Is that possible?

MR. KELLEY. That is what we have asked ourselves and got this answer. The Town, first of all, is not and cannot be in the real estate business. The Town cannot buy it and resell it under the law. The Federal government will not sell it to us for resale because they say "You are not in thereal estate business. If you are going to sell it--buy it from us for $30,000.00 or $60,000.00 and sell it at a profit--we'll do the same thing, thank you." So, that is out.

MR. MODERATOR. Any further discussion? Mr. Henery.

MR. HENERY. If we acquired that at the appraised value, would there then be all these restrictions?

MR. MODERATOR. I think Mr. Kelley has already answered that question.

MR. KELLEY. Yes. If we acquired it, they are very reluctant to sell land to towns with no restrictions on it simply on the basis that they don't want the town in the real estate business. The reason I say that, and I am sure of it, we tried it on a little piece of property up at Bass Point that we tried to use without any use

restriction on it and we were turned down on the basis that what did we want to do with it. We wanted to build a road through it and then sell the rest of it. They said, "Look, we'll give you what you want for the road but we'll sell it, thank you."

MR. MODERATOR. Any further discussion? Mr. Hudson.

MR. HUDSON. I would like to ask what happens if we at this Meeting here vote no on the motion of the Advisory Committee.

MR. KELLEY. If you vote no--in other words, if you defeat the motion to indefinitely postpone?

MR. HUDSON. Yes.

MR. KELLEY. Then I think at that time someone would have to make a motion to buy this land.

MR. MODERATOR. Not necessarily, Mr. Kelley. It could be referred to committee. Almost anything could be done.

MR. HUDSON. Referred to a committee--would it be possible to refer it to a committee?

MR. MODERATOR. Well, the procedure would be, if that is your desire, to defeat the motion to indefinitely postpone. Then you could make whatever motion that might be germane to the question.

MR. HUDSON. May I say a few words on that?

MR. MODERATOR. Yes.

MR. HUDSON. It seems to me there have been several ideas offerred here that deserve a little more knowledge. I don't think anyone is actually prepared to answer all the questions. And there have been several ideas propounded. If we vote no, we are not voting yes to buy the land. We are merely voting against an indefinite postponement. If we then have a motion to refer this to a committee, I would think that the committee--it would be a member of the Advisory Committee, of the Planning Board and perhaps one or two people at large from our Town--who could report back to us. It might be worthwhile. I don't think we would be losing anything, anyhow.

MR. MODERATOR. Is there any further discussion? The question is called for. Will those in favor of the motion to indefinitely postpone manifest by saying "aye"; contrary minded "no."

Vote: The motion is carried and the Article is indefinitely postponed.

EXHIBIT 77

COMMONWEALTH OF MASSACHUSETTS
TOWN OF NAHANT

ANNUAL TOWN ELECTION Nahant Town Hall
Saturday April 24, 2021
7:00 AM - 8:00 PM

AND

2021 ANNUAL TOWN MEETING
FLASH ROAD PARK
67 Flash Road, Nahant, Massachusetts
Saturday, May 15, 2021 12:00PM

ARTICLE 22. (Authorize Acquisition) To see if the Town will vote to authorize the Board of Selectmen to acquire, by gift, negotiated purchase, eminent domain taking (pursuant to c.80A exclusively), or otherwise, the fee simple interest or any lesser interest in all or a portion of the land located at 430 Nahant Road, Nahant, *[shown on Assessors Map/Lot as 1B-0-1,]* and described in a deed recorded with the Essex South District Registry of Deeds in Book 5344, Page 142, certificate #47172, for open space, recreation, conservation and/or historic preservation purposes and an easement to use certain portions for beach purposes as shown on a plan on file with the Town Clerk, subject to the receipt by the Town of grants or gifts in the amount of at least $3,000,000, or such larger amount as shall be required, together with the amount appropriated as described below, to pay the purchase price or *pro tanto* amount, as the case may be, and all costs incidental or related thereto, and to take any other action relative thereto.

ARTICLE 23. (MWRA Borrowing) To see if the Town will vote to raise by borrowing, a sum not to exceed $200,000 from the Massachusetts Water Resource Authority, to repair and/or replace water distribution lines and appurtenant structures, and in connection therewith, to enter into a loan agreement and/or security agreement with the MWRA relative to such loan, or take any other action relative thereto.

ARTICLE 24. (Wastewater By-law Amendment) To see if the Town will vote to amend Article XIV of Nahant's by-laws - Discharge of Wastewater, Drainage, Substances or Wastes - (1) to add definitions for 'Infiltration', 'Infiltration/Inflow' and 'Inflow'; (2) to add the following language to Section 6.5 - "This section includes, but is not limited to, inflow. Inflow is strictly prohibited."; (3) to rename Section 9.11 and add language clarifying the process to inspect for infiltration and inflow; (4) to add Section 10.7 to clarify the Town's ability to enforce these by-laws; and (5) to add Section 5.14 requiring the implementation of a 4:1 I/I removal plan for large (re)development projects; a copy of these amendments is available for review in the Town Clerk's office, or take any other action relative thereto.

ARTICLE 25. (Police By-law Amendment – Firearm Discharge) To see if the Town will vote to amend Police By-law Article XI Section 1 - Firearms - by deleting the words "a minimum of 300 yards off the shore" and replacing it with "a minimum of six-hundred (600) yards from the mean low water line", or take any other action relative thereto.

ARTICLE 26. (By-law – Snow Removal - Sidewalks) To see if the Town will vote, pursuant to Massachusetts General Laws, Chapter 85, Section 5, to amend Article VIII of the Police By-Laws - Streets, Sidewalks and Public Ways - to add the following section:

Section 15. (a) The owner or any other person having the care of any building or lot of land abutting upon any street or public place within the Town where there is a sidewalk, shall clear sidewalks and any abutting curb cuts or ramps of snow and ice a minimum of three (3) feet in width within twenty-four (24) hours after the snow ceases to fall for residential properties and within twelve (12) hours after the snow ceases to fall for non-residential properties. If the sidewalk becomes covered with ice that cannot be readily removed, the owner shall place sand, salt or similar material on the sidewalk so as to render it safe for pedestrians.

(b) This bylaw shall be enforceable through the Non-Criminal Disposition Procedures provided in Article XIII of the Police By-Laws, but the penalty for violation shall be:

1st offense: Warning
2nd offense and subsequent offenses, absent any mitigating circumstances: $10.00

Each day on which a violation exists shall be deemed to be a separate offense.

The Nahant Police Department shall be authorized to enforce this by-law.

EXHIBIT 78

In the Matter of:

Town of Nahant Annual Town Meeting

Annual Town Meeting

May 15, 2021

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COMMONWEALTH OF MASSACHUSETTS

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RE: Town of Nahant *
Annual Town Meeting * Date: May 15, 2021
*

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Mary Indomenico, ACT, CET
Official Court Transcriber

MR. CARRNGELO: Mr. Moderator, given the size of the crown and the fact that Article 21(v) depends or is intertwined with Article 22, I move that we address Article 22 out of order and that next.

(Applause.)

MODERATOR: Okay. There's a motion to take Article 22 out of order and to argue it -- put it before the house next. And I don't think that's debatable. I'm not sure. It's debatable.

So, is there any discussion on the motion to take Article 22 out of order?

UNIDENTIFIED MALE: Second the motion.

MODERATOR: Seconded. Okay. The motion's been made and seconded. I don't see any other discussion. Let's vote on the motion to take 22 out of order.

So, let's vote. It's a majority vote. Okay, we're going to put the ten second countdown on.

Those in favor, 686; those opposed 156. The motion carries.

All right. We go to Article 22. Mr. Vanderslice?

MR. VANDERSLICE: "I move that the board of selectmen is authorized to acquire by gift, negotiated purchase, eminent domain taking, pursuant to Chapter 80A

exclusively, or otherwise, a restriction in easement interest in approximately -- in an approximately 12.5 acre portion of the land located at 430 Nahant Road, Nahant, shown on assessor's map lot as 1B-0-1, and described in a deed recorded with the Essex South District Registry of Deeds in Book 5344, Page 142, and in certificate number 47172 for open space, recreation, conservation, and/or historic preservation purposes, and an easement to use certain portions for beach purposes, including the right to install certain improvement to facilitate the public use of the area as shown on a plan drafted by Coughlin Environmental Services dated April 2021 on file in the town clerk's office, and is printed in Appendix 17 of the report and recommendations of the advisory and finance committee. Subject to the receipt by the town of grants or gifts in the amount of at least $3 million dollars, together with the amount appropriated as described above to pay the purchase price or pro tonto amount as the case may be and all costs incidental and related thereto."

And before we start --

MODERATOR: Seconded by Mr. Lewis.

MR. VANDERSLICE: Before we start, in the FinComm book that everybody got, we promised that we would continue to discuss and deliberate on this issue. We met

this morning before this town meeting and we re-voted Article 22. The finance committee now recommends Article 22.

(Applause.)

MR. VANDERSLICE: It was based on some of the committee members did a very detailed analysis of their own, which we found in support of -- much -- all of what's been done to date. Some of the committee spoke with dismay that our previous recommendations had been misrepresented and misconstrued. And I just encourage you to read what we wrote in the book.

Before we start this, I would just like to say that I walked up to Forty Steps Beach this morning before this meeting and I looked out towards East Point. It was a beautiful clear day; there was no haze. There was a freighter out there that looked like it was hanging in the sky. East Point is beautiful in the bright green on springtime, in the black of the rocks. It's a very special place. These discussions tend to get very clinical very fast.

So, as we discuss this this afternoon, I just want you to think that that is a very real place and we are discussing a real and very important part of the town.

(Applause.)

Mr. Antrim?

MR. ANTRIM: So, we're -- we're taking these Articles out of order. This Article is to authorize the board of selectmen to execute eminent domain. But the financial -- the financials are important to that because we have to afford it, right? So, we haven't talked about the CPA Articles yet, but let's do that to put everything in context.

So, hopefully everybody here knows that CPA funds are funded -- that Community Preservation Act funds are funded with a two percent surcharge on our real estate tax. So, that creates a bucket of money from which we can fund various community projects. So, those are Articles 21(a) through 21(v).

So, every year we take that bucket of money and we decide how to divide it up among the approved projects that have been approved by the community preservation committee. This year there are, of course, a bunch of those. One of them is an Article for funding the preservation of the historic buildings of the library, the town hall, and Illingwood (phonetic) Chapel, that's a $500,000 ten-year bond. This eminent domain taking is funded by a one-and-a-half million dollar thirty-year bond. So, I mention that to draw the comparison between

those two borrowings. One is you know, they're each $50,000 a year. Right? $500,000 divided by ten is fifty; a million-and-a-half divided by 30 is fifty. Of course there's interest that goes into that, and so it's a little bit more for the thirty-year bond, but basically they're comparable.

I haven't heard any fretting about the -- the other Article, even though cost-wise they're comparable.

So, back to this Article. This Article is -- we have a four-and-a-half million dollar budget for this Article. There's two conditions here. We've got to have three million dollars in private donations before we can take the one-and-a-half million dollar CPA bond. So, we have that three million dollars. Its in the hands of Nahant already. So that part's taken care of.

(Applause.)

MR. ANTRIM: Okay? So, so that -- that leaves us with the one-and-a-half million dollar bond or thirty years to fund the remainder of the eminent domain taking.

So, let's look at that one-and-a-half million dollars over thirty years. So, I'm going to speak in rough numbers. So, one-and-a-half million dollars over thirty years, our bond counsel says that's about $2.6 million dollars over thirty years. The state match in CPA

is historically running about sixty percent, but this past year was 69.4 or something like that. But for conservatism, we assume fifty percent. So, the fifty percent state match brings that -- that $2.6 million dollars down to just over -- or just -- excuse me, just under $1.7 million dollars. So, that's what Nahant taxpayers will be on the hook for out of the CPA funds. No extra money on your tax bill.

(Applause.)

MR. ANTRIM: So, I just want to make sure that's clear. So, if you take that $1.7 million dollars, divide it by thirty, it comes out to something like $56,000 a year. You divide that by about 1,600 households, it works out to $35 per household per year. Already -- again, already in your tax bill. I bought two pieces -- pizzas at Captains last weekend and it cost me more than that.

So, the other important aspect of this is that the Article's written to require the use of Chapter 80A. So, quick tutorial on eminent domain. There's two -- two laws. One is Chapter 70 (sic), the other is 80A. The difference is with Chapter 79 (sic) you say we're taking the land, you give them the fair market value -- or what you claim is the fair market value and you own the land. And if there's any haggling about the price, it comes

after.

In this case, we're going with Chapter 80A. And what that does is you announce "I'm going to take this land." In this case, as a conservation restriction, and "here is what we're offering." And then that goes to a commission, and the commission decides what -- what the -- what the fair value is for the land. And if -- when they -- after they go through that process, which I think was told takes maybe six to eight months, they come up with a value and you say we can afford that or we can't afford that.

Again, our budget is four-and-a-half million dollars. Three-and-a-half from -- I mean excuse me, three from the private donors, and one-and-a-half from this bond. What we expect the cost to be based on a thorough real estate appraisal of this land which is in a natural resource area, is just under two million dollars. The estimates for the legal fees and so on is about a half-a-million dollars. So, that leaves us two million dollars in contingency.

The third -- the third important factor is that when we received this three million dollar donation earlier this week, it came with a legally binding gift agreement. And that gift agreement says that that three

million dollars is spent first. So, if we go through this process and the -- and the real estate holds its value at two million dollars, and the legal fees work out to be a half-a-million dollars, we don't even need to take the bond. It's covered entirely by the three million dollars private donation. And that -- that three million dollars also comes first if we have to back out of the agreement because its too high. If it's more than the four-and-a-half million dollars and we haven't received -- and we don't then receive private donations to reach the amount that the commission decides.

So, by -- by requiring Chapter 80A, we think we have a pretty tight financial picture.

So, on Article 22, the reason to vote yes is that you get a twelve-acre ocean front park in conservation land without roads, without lights, without five acres of eighty geo thermal wells, and without the biggest building in town.

(Applause.)

MR. ANTRIM: For $35 a year, I think that's the bargain of a lifetime.

(Applause.)

MR. ANTRIM: So, so let's talk about the reasons why people might want to vote no.

One reason is that someone told me they want to live in a college town, and that's a valid reason. You know? I mean I can't say -- I personally want to keep Nahant the way it is, but if you want to live in a college town, that's one reason to vote no.

One reason I've heard is our taxes will increase. I think we've -- I think I've just addressed that with this, you know, this explanation of the one-and-a-half million dollars.

So, I want to backtrack for one second. If -- if we -- if we go through this ADA process and the number comes out to more than four-and-a-half million dollars, the town cannot spend a dollar more. We can only spend what town meeting authorizes, that's it. So, there's no, you know, oh, you know, we thought we were going to spend a million-and-a-half, but we wound up spending three. That can't happen unless you all come back together again and say you know what? We want to you to spend more. It's not our choice; it's your choice. So, I want to make sure that's clear.

So, I think we -- I think we addressed the tax thing. I'm sure there'll be other speakers, and maybe they can address it in more detail, but I think its addressed. So, there is none. There's no more additional

taxes. We don't have that authority to do that without town meeting vote.

So, if you are concerned about a tax increase, I think there's a very real risk of tax increase associated with a development. A development accompanied with 228 people in town. And that doesn't matter if this development is Northeastern or anybody else. It's a fact if you have more people in town, there's cost. And we can debate about the amount. We've -- a study was done; it's posted on our website some years -- or, I don't know, a year ago now. It's in the board of selectmen's second statement. We hired an independent firm, RKG that did another assessment. And between those two analyses, that cost to the town over forty years is between fourteen and twenty-seven million. All right? So, that money has to come from somewhere.

Now, some people like my friend at the podium, will question those numbers, but they're not nothing. We can do a simple one, right in our head right now. So, Nahant's tax rate is about 1.1%, right? So, that means that's what we all pay, not every entity in town pays real estate tax. I won't mention any by name, but we all pay.

So, after this development, the budget is I think around $70 million dollars for a planned expansion. And

you know, for one part of that -- let's say it's -- the whole property is worth $800 million dollars at the end of the day. $800 million dollars times 1.1 is $880,000 a year. The generous offer we've been -- we've received is -- works out to $150,000 a year. So, less than twenty percent. That generous offer is less than twenty percent of what you all pay. And its far short of anybody's estimate of what the cost to the town will be.

So, if you're worried about your taxes, you -- you won't vote against eminent domain.

MODERATOR: I'd summarize it again.

MR. ANTRIM: Sorry.

MODERATOR: No problem.

MR. ANTRIM: All right. So, another -- another reason I've heard people want to vote no is they don't think it's -- they don't think its fair to put a conservation restriction on someone's land.

But I want to remind people that this area's been in a natural resource area for over thirty years, and with the support of Northeastern University. No buildings are allowed in a natural resource area unless you are subject to the Dover (sic) Amendment, which allows educational and religious institutions to potentially build in areas where other entities aren't, where you and I can't. They can;

we can't. Does that sound fair?

UNIDENTIFIED MALE: No.

MR. ANTRIM: But there's more. As an educational institution, Northeastern doesn't have to pay taxes. So, does that sound fair?

SEVERAL: No.

MR. ANTRIM: Not to be, but -- so, its doubly unfair. You know, they get privileges, you know, that we don't get. They can develop the land and not pay taxes. That's not fair. It's doubly unfair; it's wildly unfair.

Another reason -- another reason someone might vote no, and this is a tough one -- this is something our community has been struggling with, or at least some of our community's been struggling with -- is that along the way, you know, feelings have been hurt. Mistakes have been made on both sides of this issue. Facebook posts deliberately misleading people and hurting people have happened; we all have to admit that. But we have to rise above it for an hour. To throw the entire Town of Nahant under the bus because you're upset about a Facebook post or how the wetlands bylaw vote went three years ago, or whatever the reason, vote for Nahant and for our collective futures.

So back to the -- back to the -- the project to -

- $500,000 fund the library repairs and town hall repairs and Illingwood Chapel repairs -- those -- if we don't approve that, there's no bulldozer waiting to knock those buildings down. That's not the case here. That's not the case here. If we don't -- if we don't save this land as a conservation area, the bulldozers are coming, and they're going to strip that land bare, taking with it fifty years of tree growth and birds' nests and everything else.

So, this is our day, this is the moment, this is our chance. There's no do overs. There's no second chances. We hold the future of Nahant in our hands. This thing here, the next click you make on this thing here, decides the future of Nahant forever. Choose wisely.

(Applause.)

MODERATOR: Mr. Cullinan.

MR. CULLINAN: Thank you. Mark Cullinan, member of the board of selectmen, 38 Ocean Street, Nahant.

I'll only be less than a minute. First of all, thank you Josh. I think you covered just about everything that needs to be covered.

Approximately sixty years ago, probably today, Nahant had an opportunity that it passed up. We can redo that vote today and we can make amends.

Sixty years ago today we voted not to accept that

property. That was a mistake. We can change that today with one click of a vote.

(Applause.)

MR. CULLINAN: This is -- this is not a financial issue to the town. I've spent almost my entire professional career managing, planning the town's finances. I would not put this town in a position, a financial risk position, if I thought that exists. It does not exist. I urge you to vote for this.

(Applause.)

MR. CULLINAN: For today and for the future. Thank you.

(Applause.)

MODERATOR: Mr. Carangelo?

MR. CARANGELO: Thank you. I would start by sharing Mr. Vanderslice's observation and my personal enjoyment of the view out at East Point. The views of the ocean are spectacular. The general environment is amazing. Its green, its lush, and none of that is about to be destroyed.

Looking -- looking at the map over here, this -- this hill that we are talking about -- and there's literally the one piece that is really under contention -- this piece behind the bunker, is a manmade pile of dirt

that has had trees growing on it that are invasive, not native, and that have had all kinds of time to grow, that's true. However, just as when you clear a lot and build something else, it redevelops, it comes back. That's fine.

The thought of East Point being destroyed, being denuded, being obliterated, is just -- it's unfortunate. It's a scare tactic and it's -- it's an exaggeration.

In large part, which is the part that almost everyone goes to, the town's actual park isn't touched at all. There's no touching of that; it doesn't change.

So, I just wanted to address that. Because everyone here, myself included, loves East Point and appreciates it. And everything that's been there before -- before Northeastern, before the army, before Frederick Tutor's mansion, and before the Hotel Nahant, and before Lynn cleared it to have sheep graze out there, it changes, it evolves. It's not natural. It is beautiful, but let's not make it something that it isn't.

In any event, with regards specifically to eminent domain, I urge you to vote no on eminent domain because it actually resolves nothing. What eminent domain will do is open a pandora's box for years of legal wrangling, continued discord, court battles and costs.

Voting no will stop this divisive conflict and move the board of selectmen forward to negotiate in good faith.

ADA, this chapter, has real significant financial risks. There are real financial risks here, millions of dollars that taxpayers are on the hook for. Millions of dollars that are not the result of a decision to build or not build or take or not take. There are damages. There are impacts that someone else like a court will say you owe this to Northeastern. That's been brushed aside.

The proponents would have you put your head in the sand and say there's no risk. The low appraisal is correct. That's the only way to look at it, two million dollars. Northeastern wouldn't look at that in any other way, nor would a court. Northeastern has no right to sue for damages. The cost estimates that we came up with in the board of selectmen's second statement and then paid someone else to repeat the RKG report, are unquestionable. We keep repeating them again and again, despite questions raised within the finance committee until this morning, was deadlocked on it. But these are not hard and fast numbers.

What is -- in all of this, again, it's funny watching and reading letters going back and forth between Northeastern and the selectmen saying yes, let's mitigate;

let's negotiate. Well, okay, let's do that. They won't do it. Well, we're asking you to do it. The fact that no one has sat down here in the last months to actually have a meeting is just astounding -- its astounding.

And rather than go down this path of eminent domain a negotiated settlement with Northeastern to allow them to build something that they have every right to build within parameters that the town will find acceptable, and to have them pay as they have offered to pay with the six million dollars or whatever, it's negotiable, a PILOT -- have them pay PILOT - payment in lieu of taxes. They do it in Boston. Other schools do it everywhere; non-profits do it. No one -- no one from the town's administration has approached Northeastern for a PILOT payment in over twelve years. No one brought that up. The school department had the wherewithal to -- when the town cut its art and music budgets to collaborate with Northeastern and arrange something so that Northeastern made up the difference. That's possible. It's not being done here.

The options that have been put on the table for you know -- and this was recently released -- the question's been being asked for two years and recently was just revealed, the places where the current board of

selectmen would find acceptable for Northeastern to build are the areas basically where they are now and closer to the entrance. There were four options floating out there that involve multi-story buildings right at the entrance. That would require more expensive construction, zoning variances, wetlands bylaw variances, the abutters to actually agree. And under this environment what, how is that possibly ever going to happen? Why is any of that a realistic expectation given the way the town has been acting towards Northeastern?

In fact, the wetlands bylaw was designed to stop Northeastern. In open meetings with the FinComm at the time, that was the cited reason for putting the wetlands bylaw in place. And what did it do? It said -- it forced them to think, okay, the top of the bunker is actually the most reasonable place to build.

A year later there was a zoning variance that passed town meeting -- a special town meeting to again stop them from building. That was declared illegal. That was overturned by the state; had no effect on Northeastern.

There are lawsuits pending that were brought by private -- private groups, private individuals that had been told by the judge, "you have no hope of winning

this." And yet somehow, the town got pulled into these private lawsuits. Why? Why?

The appraisal, it could sell about two million for that property. It's arguable at best.

One thing to note, that appraisal was not made public until there was a public records requests to get it. And even then, there was a thirteen-page summary, not the full report.

I'll stop here, because I know there are people behind me.

(Applause.)

MR. CARANGELO: Is that for stopping or acknowledging that the people behind me are actually behind me?

Please vote no on this Article. Yes means lots of risk to taxpayers, years of court battles, and never ending arguments. Worst, it gives no guarantee whatsoever, other than we'll be in court for years. And no offense to the attorneys in the room, the lawyers will get paid regardless of what happens, regardless of the outcome whether they win or lose. And why are we paying for that? Think of all the other things we could be doing with this money.

One more point on the CPC, because we take these

out of order --

(Disapproving noises in background.)

MODERATOR: He has the floor; he'll be given -- until he releases it, he's still within his time limit.

MR. CARANGELO: Almost there.

MODERATOR: Let's treat each other with dignity.

MR. CARANGELO: Thank you, Mr. Moderator.

(Applause.)

MR. CARANGELO: With regard to the CPC funding mechanism, yes, it's borrowing a million-and-a-half dollars, and it does have a state match. The state match pays the interest and that's it. It's -- it's taking money that could use that multiplier, and instead, we're using the multiplier to pay interest. It's - it doesn't particularly make sense. But you pay CPA (sic) you pay those funds, regardless. It's -- it's not an increase in your tax, but it is your tax; it's real money.

But vote no so the selectmen can do their jobs, negotiate for the entire town, and we can all get on with our lives.

(Applause.)

MODERATOR: Thank you. Further discussion? Mr. Canty. Mr. Canty?

MR. CANTY: Yes, hi. Thank you, Ken.

I think he did that so I'd forget what I was going to talk about. He did a good job.

I'm not going to overdo what my two colleagues have already commented on. And excuse my drafty voice. But what's important here with everybody is that there's a level of trust in your three selectmen. We've asked every question and we've questioned every answer. We've gone through this soup to nuts the entire year. It's been a roller coaster ride for me for a first year in here. But I've been so happy to work with these gentlemen.

You're talking about over seventy years of government experience, town government. Between Mark, myself, and Josh. We're not here to do anything but try to encourage your trust in us.

When we talk about negotiations, let me tell you, we tried to do that up at Northeastern. When we talk and we say no tax increase and there will be none with us, we'll walk away from it first sign of it. When we talk about future projects, which I think we're very likely to see, especially where Mr. Martin and his conversations and his broadcast had indicated that the next project -- or the next project will be the renovation of the Edward Center. What did you think? Do you think they're going to do a paint and wallpaper? You know, we're talking --

we're talking some very serious things.

But what I'm asking while you continue here, think about who you're dealing with. Everything we say is true. We need your trust. Thank you.

(Applause.)

MODERATOR: Further discussion? Bee?

MS. ROGERS: Thank you. Bee Rogers, 44 Pearl Road.

It sounds from the reactions of the people here today that most people have already made up their minds and are probably not going to listen to or be persuaded by counter arguments.

Nonetheless, I am here to urge voters to vote against this Article. We've talked about the potential costs to the town. We've been asked to trust the selectmen. The potential costs to the town, in my view, have been brushed aside, minimized, and we have heard the rosiest of possibilities and not the possible downside. The taking of 80A, does allow us to walk away. We may not be allowed to assess damages, but we are responsible to pay the legal costs of the other side.

So, if we decide that we want to walk away, we can't afford it, then we will be liable for Northeastern's legal costs. I don't know if those can be covered under

the Community Preservation Funds.

But even before the case is decided, if the town borrows $1.5 million dollars, that can't but affect our bond rating. It may not affect our taxes, but it can't help but affect our ability to borrow for needed sewer repair, flood mitigation, other needs of the town.

So, the supposed costs to the town that we've read about are totally unsubstantiated. We haven't been able to see the basis. The building will house a few dozen scientists and grad students who will spend weekdays working there, and then go home. The burden on the town's infrastructure will be less than the burden of all of us in town who have been working at home, flushing toilets and running water during this pandemic because we couldn't go to our offices.

Northeastern has already committed to repairing any damages to the roads if they use heavy equipment during construction.

But I really want to get away from the financial concerns. Aside from the financial concerns, the opposition to this building has been overwrought, overblown, and exaggerated. First -- since its first proposal three years ago, Northeastern has modified its plans. Its listened to and accommodated many of the town

concerns. The building design recently presented by Northeastern architects is a one-story, landscaped, environmentally sound structure, from the pictures barely visible from the road, the surrounding houses or large park. It has a green roof surrounded by plantings. Concerns for light and noise pollution have been addressed by putting mechanical systems below ground.

Northeastern has further committed to maintaining the remaining land east of the (indiscernible) bunker as a conservation set aside. They have committed to restore native plants and habitat. Including -- we've heard about the geo thermal wells -- the meadow, where after those wells are built -- it will be restored to natural habitat. The land will be protected. That's the very thing we seek to accomplish through eminent domain. They are offering it to us. They have committed to it, and they have committed to making that legally binding.

Now, the selectmen have argued in meetings and in the warrant, that really, they don't want to seek eminent domain; they want the authorization so that they can use that threat as leverage to be able to negotiate with Northeastern.

Now, they've made it clear that what they mean by "negotiate" is go away. The alternative sites they've

suggested violate environmental regulations as they know. And in fact, I'm concerned -- and this is a serious concern -- that by allowing eminent domain, the town will actually lose its ability to negotiate. We will lost the leverage that we have had and could have taken advantage of.

Northeastern has worked hard to respond to our concerns. They've got nothing for it. They've got no acknowledgment. And if eminent domain is authorized, Northeastern would very likely say fine, go ahead, take us to court, take an eminent domain taking. And the town will have lost not only the opportunity to negotiate, but any motivation on their part to work with us cooperatively as they have been doing, as they have repeatedly done.

Now, I've talked to, believe it or not, many dear friends who support eminent domain. And I've asked them, because I genuinely want to understand, what is the opposition to a building which from all the designs that we have seen, will be visible from the property, unobtrusive. You'll walk past it when you go up to the gorgeous beautiful views up at Lodge Park which we all love, enjoy, and own and will not be affected at all by this. And what I've heard is "Oh, they might decide to build dormitories. Oh, they might decide to build a

conference center. Oh, they might change -- they might do that now, but who knows what they'll do in a couple of years." Well, my understanding is, if they get approval for a building, that's the building they have to build. If they make a legal commitment, it's legally binding. If they say that they're going to build a coastal sustainability institute and they've given us the designs, that's what they're committed to doing.

The other thing I've heard is, "I just don't trust them. I don't believe anything they say." And we've been asked to trust the selectmen who have given us, I believe, a very one-sided picture of this issue, and it's very hard to say, "Well, we don't trust them, we won't listen to them, but we want them to negotiate with us." That is -- doesn't make a whole lot of sense to me. But the fact is, their commitments can be made legally binding. We don't have to trust a word they say. We can see it in black and white in legally binding commitments.

So, I don't understand why they would despoil their own property. And I don't understand why a building would destroy the town. I don't understand why a few dozen scientists, grad students coming in to work during the day, is going to devastate the nature of this town. I've never understood it.

Northeastern's proposed building and this unyielding opposition on the part of vocal residents -- who I might add have blanketed the town with -- I am going to say aesthetically unpleasing signs -- they have divided the town, destroyed friendships, hurt local businesses, and all this to stop Northeastern from making reasonable and environmentally sound improvements to their own property.

If voters authorize an eminent domain taking, the town is unlikely to prevail. They'll come in and say look, they want a conservation easement, we've promised a conservation easement. But the strife and the bitterness that have been generated will continue for years. We will be caught up in court battles. And I feel that it is time to put an end to this sorry episode. Thank you.

(Applause.)

MS. ROGERS: You know, I am going to take the liberty of adding just one note, because as I was looking for material for the warrant, I came across the speech that my husband, Pete Rogers gave ten days before he died on town hall floor on the issue of Northeastern expansion. And one of the things he talked about that hasn't been mentioned at all is the potential benefit to the town of having a postal zone -- postal sustainability institute in

which the research can benefit the town, and the university can partner with the town in mitigation and those kinds of activities.

And so we've listened to --

MODERATOR: Could you --

MS. ROGERS: -- we've listened to the --

MODERATOR: -- wrap it up?

MS. ROGERS: -- negative, negative, negative. I would like to put in a push for the positive. So, I urge you, put an end to this conflict and vote -- end it. Vote no.

MODERATOR: Thank you, Bee.

(Applause.)

MODERATOR: Ms. Tarmy, you want to speak?

SEVERAL: Vote, vote --

MS. TARMY: Julie Tarmy, 34 Forty Steps Lane --

MODERATOR: Come on, folks. Let's act civilized. All right.

MS. TARMY: Three years ago I gave a talk on East Point, and about two hundred of you same to listen. And I did it before a lot of the emotions came out that have come out over the last three years.

When I look at East Point -- and I grew up in Nahant and I spent time up at East Point -- when I look at

East Point I look at it as a historic place. I look at it as the place where the indigenous people would have chosen to do their fishing, perhaps some farming, because it is on the east of the island. I look at it as the beautiful spot that Thorwald, the Viking explorer has been said to have spotted and come on land and said "This place is beautiful. I want to build my home here." And he is reported -- through the research of a college professor and a couple of others -- to have actually died here on Nahant, very possibly on East Point and was buried there. We don't know if he's there or not. The land has changed much over the years.

After Thorwald, we have the colonists who came in, and they saw that Nahant was a great place for their livestock. Unfortunately, they felt they had to take down all the trees in order to graze their animals. I guess sheep don't like shade. But they saw the good in the land. They saw the good in East Point, which was known as the "great pasture".

Then we had the summer folk came, and they saw what was good and healing about the breezes here in Nahant, and they chose to build a hotel on East Point, the Nahant Hotel, which boasted when it was done being added onto, that it could accommodate 1,000 guests; 3,000 people

could come and eat there in a day through a few different seatings. Unfortunately, that hotel burned down in the 1860s. But then the Lodge family decided that it would be the best place for them to build their homes, and so they bought that property -- all of it. Mr. Lodge did not live long enough to build a home there and enjoy it. But his two children inherited that land and they built their homes there. They enjoyed it.

When the army came in during the Spanish American War, the Lodges allowed them to put search lights, because it was the first line of defense to Boston Harbor.

World War I, they allowed the army to come in again and they put in guns to defend us all.

And then in World War II, the army came and took the whole area. They dismantled Lodges' mansion, and kept the Lowland mansion, which belonged to Elizabeth James, Lodge's sister. And that was kept for the mess hall and the officers' quarters.

There is a lot of history there. Unfortunately, the last -- one of the last pieces of history burned down there in the 1960s. I will tell you that I was in that house the day it burned down. I did not light the match that burned it down.

But that area where they want to build is a

historic area in my mind; over centuries of history is there. And yes, it's been turned over, it's been built up, it's been built down, but there are remnants there of our history. And to me, that's what makes East Point important, the history part of it. And a lot of that history is where Northeastern wants to build. Not down in the lowland area, where there still is one vestige of the history I'm talking about, which is the small ice house, which as a historian, I am concerned about that ice house as construction may take place. I've been assured it will be okay, but I won't know that until its done.

There's other areas on that land that they could build. Why build on the one spot that holds all of this history?

I am a voter in favor of the eminent domain, even though I'm not a fan of eminent domain taking of other property. But in this case, I have to support it for the historical aspect of what will be lost.

Northeastern has shown us renderings of beautiful buildings. I even said at a meeting, "That's a beautiful building." But does it belong in Nahant? I haven't seen an architect's plan of what it will actually look like. Is there one or is there only the drawings that we had been promised that it will look like eventually?

I would vote yes, for eminent domain; no for the building that is proposed.

Thank you for your time.

(Applause.)

MODERATOR: Thank you. Yes, sir?

MR. RAUWORTH: Thanks, Mr. Moderator. Mike Rauworth, 31 Summer Street.

I have to turn around and face you all. It's like looking into a mirror, otherwise -- your vote today is a declaration of who you trust. You can trust the selectmen. The selectmen are from you, the selectmen are of you, the selectmen are accountable to you. I ask you, look at these guys. Do they look like irresponsible bomb throwers and rebel risers to you? They will make sure that Nahant does not repeat the mistake of thirty something years ago when it got approached by a developer who said, "Show me the golf course, I'll run it. I'll do everything great" and so forth. That guy turned around and tried to develop it as house lots. It took Nahant about a million bucks to get out of that one.

In fact, the selectmen are really just insisting that Northeastern live up to what it wrote in a 1965 report about the property when they dedicated this land to conservation purposes. Words that everybody lived by for

fifty something years. Here they are.

The university seeks to acquire the whole of East Point in order to make it a wildlife preserve -- a wildlife preserve. Only in this way can the unusual, literal, and (indiscernible) fawners be protected adequately in addition to the university can assure that pollution will not jeopardize the continued high quality of seawater for laboratory purposes. I got a copy of that report right here. I'll be glad to show it to anybody.

After writing those words, now having lived by them for some fifty years, Northeastern now says it wants to build -- that they have the right to build a 55,000 square foot structure in the heart of that wildlife preserve. How can they do that? Essentially, they say actually, we changed our mind -- we changed our mind. Nahant and NPT has sued Northeastern to enforce those words. And Northeastern says, "you can't touch me." The selectmen will not leave Nahant -- Nahant's shoelaces untied again. They will be sure through a signed contract that Nahant gets a voice in whatever goes on at East Point through a signed contract.

Now, your vote yesterday gives the selectmen the power to take the conservation easement by eminent domain or not. It gives the selectmen the power and the

breathing room they need to negotiate a deal that provides Northeastern with as much as possible that is consistent with protecting Nahant's interest. It makes sure that -- your vote today makes sure that Nahant has an enforceable commitment from Northeastern University in writing and signed. In short, it ensures that Northeastern will have to take us seriously.

What happens if you vote no? Nahant will lose immediately -- immediately, and forever virtually all of its bargaining power. The selectmen will have zero power to influence what the multi-billion dollar institution does in Nahant.

The conservation commission -- the ConComm, will have certain powers, but very limited ones with respect to the project. And Northeastern has repeatedly insisted that the ConComm's authority doesn't even extend to the proposed building on top of the Murphy Battery. Northeastern will claim to be virtually bulletproof as concerns to Nahant's zoning bylaws. In other words, you can't touch me, because -- as they've already done -- because of a law known as the Dover Amendment.

Northeastern will be completely -- and I say completely at liberty to change their mind as to virtually anything they have said or even promised in these glossy

brochures -- thank you -- in these glossy brochures and mailers. None of this is enforceable.

For example, Northeastern will be at liberty to double or triple the size of the building that they propose, and they will not be accountable to anything that they've promised you in any form.

For ex -- so why can they get away with changing their minds on all these things? Because what they've said in these mailers and everything else, are essentially political campaign promises. They're meant to influence your vote here today. Now, have you ever heard of a politician getting sued for breaking a campaign promise? I don't think so.

Basically, nothing Northeastern says is worth the paper its printed on. Unless it's a contract with their signature on it, and a vote yes will give the selectmen the power to negotiate to get a contract with Northeastern's signature on it. Northeastern knows that this eminent domain vote has great power against them. It's the one thing that they fear. It's why they hired a plane to tow a banner over Nahant two weeks ago, and why they pumped all of this money into these brochures.

Let's have another look at Northeastern's track record. Northeastern promises the citizens of Roxbury

that they were going to put up an eight-story building. The citizens took Northeastern's word for it, and then Northeastern built a twenty-two-story building, because Northeastern changed its mind. Northeastern double crossed the people of Burlington in the same way.

In fact, there -- I'm sorry, in their color glossy brochures, they claim that the conservation easement is worth way more than MPT's estimates. But MPT has a hard copy written valuation from an imminent respectable appraiser, a guy named Emmit Logue (phonetic), who has a reputation to protect. He's not somebody who can afford to put his name on a valuation that does not stand up, that does not support his professional reputation.

Now, Northeastern has all the money it needs to hire their own professional valuator. They could easily get somebody to do that. And if they had done it, you would have seen it quoted in one of these mailers. They would have put the photo of the evaluator on it, they would have bragged all about how their evaluation is right and ours is wrong. But you didn't see that because they didn't do it. They didn't get a valuation, because they couldn't. They couldn't get a professional valuator with professional reputation to protect to put his name on the

valuation that -- that would be that they have claimed.

Basically, you cannot trust Northeastern. They say that if Nahant goes forward with eminent domain and then withdraws, that we're going to be liable to them for construction delay damages and legal fees. But there's never been a legal decision that says that Northeastern is entitled to either. And if there were such a decision, awarding construction delay damages or legal fees, you can be sure that Northeastern would have quoted it to you in one of these brochures. But they haven't because they didn't; there's no such decision. You can't trust Northeastern.

Why does Northeastern insist on building on top of the Murphy Battery? They could easily build in the lowlands as has just been described, even if they had to elevate the structure a bit to accommodate the flood plain issues.

Why did they choose a place where they have to drill through fifteen feet of military grade concrete structure to put in an elevator shaft? What's the sense in that?

Now, Susan Solomon, who you all know and respect as our one Nobel Prize winner in Nahant, will tell you about the calculations for square footage and the

workforce at Northeastern says they're going to put in the facility. She'll say its way out of scale. Honest universities don't do that. They don't build space they don't need. And Northeastern has never explained the discrepancy. It makes it all very suspicious.

The president of Northeastern, Joseph Aoun, has great aspirations for Northeastern. He's been aggressively building its profile and statute of reputation. He wants to run with the big dogs like Harvard and MIT. Northeastern has been aggressively building its reputation. But there's one thing that Northeastern is missing, one critical element of prestige.

Let me read you something from a Harvard website. Think about panoramic views --

MODERATOR: Could we -- could we wind it up, 'cause your time is running out.

MR. RAUWORTH: I've still got a half a minute.

(Applause.)

MR. RAUWORTH: Think about the panoramic views of Boston Harbor, Charles River, and Backbay from our downtown clubhouse on the 38th Floor of One Federal Street. UMass has a facility like that, Boston College ha a facility like that on top of a tall building; Northeastern does not. And that's the real reason.

That's why they're so intransigent, so explic -- and explicable. The president of Northeastern wants those commanding views of the ocean from the top of the bunker, so that he can entertain politicians, big donors, corporate chieftains, academic conferences with distinguished panelists, even world leaders. A first class ticket to academic prestige.

I say Northeastern is not entitled to sacrifice the natural beauty of East Point just so that it can shmooze the fat cats. I say you cannot trust Northeastern. They double crossed Burlington; they double crossed Roxbury; they double crossed Nahant. I say give the selectmen the power to make Northeastern sign a binding contract so that Northeastern cannot double cross Nahant again. I say vote yes on this Article.

(Applause.)

MODERATOR: Thank you. Further discussion? Could you put the microphone back?

MR. RAUWORTH: Yeah.

(Laughter.)

MS. CORT: My name is Alice Cort (phonetic), and I live at 7 Valley Road.

I would like to speak in favor of passing Articles 21(v) and Article 22.

What are these Articles about? I think this is one thing that we can agree on. To me, they are about East Point's unique natural beauty and money and trust.

East Point is a beautiful place that has taken fifty-five years to recover to its current wildlife sustaining state. Generations of Nahanters have enjoyed it and voted to protect it. In the 1960s they thought they found a partner to keep the land from development, and allowed Northeastern to acquire the land from the military for essentially no money.

Thirty -- about thirty years ago, Nahanters designated it and other local open spaces, a natural resource area. And for a long time, Northeastern proudly acknowledged on its own website that East Point was both a marine science center and a wildlife preserve.

My family has treasured East Point since 1970. The fifty years we have been on Nahant.

But if what if your major concern is about the money and the financial risk for voting for these Articles?

In truth, both options voting for or against have financial ramifications for Nahant's citizens. But I believe the uncertainty and the actual dollar costs are

far less if we vote for these Articles than against them. A yes vote means no new taxes for residents and uses a generous gift to the community of $3 million dollars. Using real estate assessments by an independent company, the amount set aside for the eminent domain taking should be more than enough.

Northeastern disagrees with this assessment, but as recently as this week, it continued to compare the land on East Point that cannot be commercially developed by any private group with land in Newton that can be fully commercially developed. The properties are not at all equivalent with regard to the value because of this. But Northeastern is desperate to have you think so, and keeps making this claim to mislead and scare you.

To address even these concerns of the citizens, our selectmen have chosen, should negotiations with Northeastern fail, a method of conservation easement, eminent domain taking by 80A that allows Nahant to back out in the unlikely event that estimates go far above the costs experienced professionals have predicted.

To argue against this option, Northeastern has tried to scare you by saying that massive expenses for construction delays would be incurred should the town opt out. But prominent eminent domain attorneys have strongly

argued that those costs are not allowed under the law.

In addition, if we allow Northeastern to build its massive building, it is likely to be way more costly for residents. Since Northeastern pays no real estate taxes like you and I do, despite our using -- despite its using our roads and water systems and relying on our police, fire, and public works departments, we will be subsidizing Northeastern's presence on Nahant, which currently includes 114 people on site now, and at least 114 people in the new building. And that would be to the tune of at least $29.6 million dollars over forty years. That's because the estimate that RKG gave counted first the 114 that were planned in the new building. But it didn't actually do the finances for the 114 currently on site. This is an average of $740,000 per year, according to the RKG report when you do that addition. That's an average of $462 for each of Nahant's 1,600 households, and that's the low range. Using more realistic numbers for the number of people working in a 55,000 square foot building, brings the cost up to $41.5 million dollars over forty years. And it could be even more, depending on how many more people are added with the buildings' various uses. The undisclosed total personnel and visitor, and the newly announced Edwards renovation -- these amounts

are so much more than the $6 million dollars over forty years that Northeastern suggested is a fair reimbursement to the town.

So, lastly for me, this is about trust. As you've heard, Nahant's selectmen have lived here for more than forty years, and two of them grew up here. They have shown us their analyses and described the safety net provided by 80A.

Northeastern has declined to reveal information about its building, despite numerous requests, including its height, its interior design; it lists conflicting numbers of personnel in its website and materials; declined to give us explanations or clarify its personnel calculations when we asked; refused to negotiate with a mediator under reasonable terms asked by the town; and offered a financial settlement that is very far from their fair share. And it recently disclosed, after the addition to the Murphy Battery as we've noted, that it would work on the Edwards Building, but has given no information about the size or the increased number of personnel that that might have.

All of these developments would add years of construction and more and more people and more costs to Nahant residents.

The limited drawings we have been shown reveal an idealized view of a virtually invisible building on top of the Murphy Battery, drawn my undoubtedly talented artists. But which, I believe, represent a fantasy. Because the drawings are a vision that cannot be achieved within many years, if ever.

Lastly, according to newspaper reports, Northeastern also shared with Roxbury, drawings of dorms with eight to ten stories, which suddenly turned into drawings of twenty-two to twenty-five stories in the middle of the project.

I suspect that Northeastern would say now it has no current plans for such changes here. But think again to Roxbury, and ask when Northeastern decided on its enlarged plan and when it shared it with the community, or if it cared about how the community felt about it.

So, if the choice is to save the beautiful, natural area of East Point or destroy it, I ask you to save it. If the choice is no new taxes and use CPA funds versus increasing real estate taxes as Northeastern's program grows and grows and we absorb their costs, I ask you to choose the CPA funds and no new taxes. If the choice is to trust our selectmen who have deep roots in this community versus trust a billion dollar university

that has already mislead us and the citizens of Roxbury and Burlington, I say trust our selectmen.

Unfortunately, Northeastern has changed since it came here fifty-five years ago. And in this, it has not earned your trust, and it should not earn your vote.

Please vote yes on Articles 21(v) and 22, and save East Point and our community from the destruction and expense of Northeastern's proposed over development. Please give our selectmen the power to negotiate from strength. And if necessary, take by eminent domain with a conservation easement. Thank you.

(Applause.)

MODERATOR: Thank you. We're doing --

CROWD: Vote, vote, vote!

MODERATOR: All right. I'll ask the speakers, we've heard a lot of the same information. We can try not to be duplicative of the stuff that's already gone by. I appreciate that.

MR. BARANEK-OLMSTEAD: Brendan Baranek-Olmstead, 2 Summer Street.

I wanted to follow up with questions that were submitted to two weeks ago to the board of selectmen and get some responses.

MODERATOR: Is there a particular reason why?

MR. BARANEK-OLMSTEAD: Because I submitted questions to the board of selectmen two weeks ago and requested responses, and I was told I'd be provided responses, and I have not received any responses so far.

MODERATOR: Well, would they impact this -- the question before the house?

MR. BARANEK-OLMSTEAD: I believe so, 'cause they --

MODERATOR: How could -- how could they do that? First of all, I'm advised by counsel that the board is not obligated to answer questions from the (indiscernible), but they may well. But I just want to make sure that what you're talking about is something that has substantively something to do with the issue before the house.

MR. BARANEK-OLMSTEAD: I believe we're discussing eminent domain, and giving the board of selectmen authority to use that eminent domain in the future. Is that correct?

MODERATOR: That's my understanding.

MR. BARANEK-OLMSTEAD: Okay. So, has eminent domain every been used in the past? I've heard from some selectmen from their personal experience, but I have not got a full accounting of what the town's business has been.

MR. ANTRIM: None of us remember that. That doesn't mean it never happened, but none of the three of us remember that, and we haven't had time to research it beyond our own memories.

MR. BARANEK-OLMSTEAD: Okay. Then I would just get to the heart of the matter.

It was the -- I had recently contacted Coughlin Environmental Services about the boundary of the proposed conservation easement. And the -- Coughlin Engineering seemed to indicate that the paved services in front of the Murphy bunkers was included in the boundary. It was my understanding that there's been no changes to the map that's been provided. So, I was, you know, trying to understand you know, what decision making was made, you know, prior to this meeting as to why there was no need to make changes.

MR. ANTRIM: I think what you're asking was the question we discussed on the phone the other day?

MR. BARANEK-OLMSTEAD: Well, you had said you were going to review the emails and take a look at. So, I was trying --

MR. ANTRIM: Yeah, so --

MR. BARANEK--OLMSTEAD: -- so this morning you confirmed that there was no changes to the map. So, I was

just wondering what the decision making was to make that determination.

MR. ANTRIM: Yes. There's no changes to the map; there wasn't time to do that -- enough time. But the intent is to take -- put the conservation restriction on the -- let's call it the "the dirt" on top of the battery, and not the -- not the space below the dirt, if that's what you mean.

MR. BARANEK-OLMSTEAD: Okay.

MR. ANTRIM: Did that --

MR. BARANEK-OLMSTEAD: Then I guess, did the board of selectmen obtain any legal advice regarding the implications of the consultant's statement?

MODERATOR: I direct not to answer; that's privileged information.

MR. BARANEK-OLMSTEAD: Okay, then. I took a walk up to East Point yesterday and noticed there was HVAC infrastructure within that area. Is it known whether this -- these structures are directly associated with the Murphy bunker facility and operation?

MR. ANTRIM: I think -- I think the HVAC stuff is associated with what's inside the Murphy Battery. I don't know whether -- where the line falls exactly on the map that you've seen. But it would not preclude them from

maintaining the equipment. It just -- they can't build anything addition -- they wouldn't be able to build anything additional in the conservation restriction area.

MR. BARANEK-OLMSTEAD: So, they couldn't replace the equipment?

MR. ANTRIM: I think they can replace what's there, but they can't build something new.

MODERATOR: You know, this really way afar a field from what's the issue before the house.

MR. BARANEK-OLMSTEAD: Well, my next --

(Applause.)

MR. BARANEK-OLMSTEAD: -- my next question was whether --

(Applause.)

MODERATOR: One more question, that's it. Pick it out.

MR. BARANEK-OLMSTEAD: The speakers before me were given up to ten minutes of time to comment with no interruption.

MODERATOR: That's why -- people are leaving. We don't want -- we don't need ten minutes a person. They spoke in accordance with what was before the house, not just random questions that have really nothing to do with it.

MR. BARANEK-OLMSTEAD: All right. Then I'll get to the heart of the matter.

My con -- I'm urging the citizens to vote against the use of eminent domain -- to authorize the board of selectmen to use eminent domain, 'cause I'm concerned about the future implications this decision will have on the other property owners in this town.

The proposal put forth is to take land by eminent domain and establish it as conservation land. We have a variety of properties in this town that are subject to repeated flooding. The federal government in the case of Hurricane Sandy, has been starting to talk to states about requiring the use of eminent domain as a mechanism in communities to address food mitigation risks.

If we are voting now to approve the use of eminent domain to establish conservation land for land that is outside of a flood zone, then what protections do we have if they come back to us in the future and basically say in a flood zone you should make this a viable option?

MODERATOR: Thank you. Thank you very much.

MR. BARANEK-OLMSTEAD: Do I have --

MODERATOR: Further discussion?

(Applause.)

CROWD: Vote, vote, vote!

MODERATOR: You know, I understand everybody's really excited. It's been a long day so far; we've got a lot of stuff, a lot of folks in line. But the way we operate is you can't call the question just from shouting from your chair. You want to call the question? Get in line. We used to have Bernie. And when Bernie got in line, we knew what was coming, but we don't have Bernie anymore. So, I understand what you want, and I understand why you want it. But we've got people who want to speak and want to speak on the topic. So, please go ahead. Go ahead.

MR. BRADLEY: Thank you. Scott Bradley at 33 Summer Street.

And I rise to speak for Paulie and Larry Bradley of 33 Summer Street, who are also here in attendance.

Paulie is the co-founder of S.W.I.M., and former chairman -- chairperson of the Nahant Conservation Commission. Larry is a Dory Club member, sailboat captain, and Paulie's eternal supporter.

These remarks have largely taken from an Article authored by Paulie Bradley upon retirement from S.W.I.M.. It's entitled, Nahant Northeastern and S.W.I.M.:

"There's a long history of cooperation between

the Town of Nahant and Northeastern University Marine Center. Both have worked energetically to protect the waters off Nahant. Nahant needs clean water for swimming, fishing, and lobstering. Northeastern needs clean water for the salt water intakes that are essential for its laboratory experiments. Both benefit from studies done in and near the Nahant seashore.

As citizens, we all want a clean environment for our children and our grandchildren.

Starting in 1967, the Nahant Conservation Commission under Chairman Ruth Alexander, searched for a non-profit group to buy the East Point land which was being sold by the federal government. The town had turned down the acquisition as a public park in 1964. And the next tier of bidders was non-profit groups such as universities before an offer to the final tier of private developers.

There were many developers eager to buy the property and build high-rise apartments, just as they've done in Winthrop.

A small committee was formed under ConComm: John and Linda Vanlere, George and Georgia Lawson, and Larry and Paulie Bradley. They called every college, university, and likely non-profit group.

Larry, who holds a masters degree from Northeastern, learned that Northeastern was looking for a location to establish a marine science center. Quickly, Larry talked it over with Nahanter John Lowell, then a member of the board of trustees as Northeastern, and the rest is history.

For many years after Northeastern came to Nahant, there were articles in town meeting to change the zoning bylaws in order to build apartment buildings in Nahant locations. But they were all defeated, except for the Bass Point Apartments. You can imagine what Nahant would look like if we'd allowed those apartments, especially high-rise apartment complexes.

Nahant has about one-quarter mile -- sorry, about one square mile and Winthrop has about one-and-a-half square miles. Nahant's population is 3,410 people; Winthrop's population is 17,497. Nahant could be as crowded as Winthrop. Instead, Nahant keeps its small-town feel, and Nahant is know as the home of the internationally respected marine laboratory.

During the 1970s, the Nahant Conservation Commission and Northeastern, worked on a public school elementary program and a volume of natural history field notes with keys to the organisms living in Nahant waters.

Northeastern ran a program in conjunction with the Nahant Public Schools and printed copies of the texts for all students.

The waters around Nahant were monitored for many years by citizens, lead by Norman Carl Brooks and working with Northeastern, the Massachusetts Audubon Society, and the Town of Nahant.

In 1984, Northeastern Professor Trish Morse (phonetic) sounded the alarm that Nahant was applying -- sorry, that Lynn was applying for a waiver of secondary treatment which, if accepted, would continued to pour polluted sewage effluent into Nahant waters. This lead to the founding in 1984 of safer waters in Massachusetts, S.W.I.M.. Mike Manning was one of the original founders of S.W.I.M., along with Bill Coffey, Norma Brooks, and Paulie Bradley. They took their concern to the Nahant Selectmen, and Richie Lombard was the first of the board of selectmen to realize how important an issue it was to Nahant.

Northeastern was with us from the start in fighting for clean water.

Next came the battle to protect Nahant from pollution from the Greater Boston MWRA sewage outfall. Nahant selectmen and other town officials gave hours of

time, contacted elected officials, and attended meetings which were critical in bringing secondary treatment in a significantly longer outfall.

Northeastern experts came to meetings in Boston with the Massachusetts Water Resources Association testified at hearings, read the lengthy MWRA reports which we called the 'Seven Deadliest Volumes' and wrote material for the responses which were called the 'Sapphire Necklace.'

State--wide environmental groups backed us. Instead of primary treatment, we won secondary treatment. And instead of an outfall three miles from Nahant, we have a Boston outfall six miles from Nahant, nine miles from Boston. That was Nahant working with S.W.I.M., working with Northeastern.

During the early 2000s S.W.I.M. prevented dumping of contaminated dredging spoils from Chelsea Creek, just offshore from Nahant. It was a quick victory, because a proponent saw the strength of S.W.I.M., the Town of Nahant, and Northeastern's coalition. This victory has had widespread ramifications. Stopping and preventing other proposals to use the ocean to dispose of polluted material.

S.W.I.M. has always worked with the town and the

university on many more projects over the years; a natural gas pipeline, a proposal for flood gates over the Saugus River, protecting still wagon bank and endangered whales, creating a no discharge area in Nahant waters and others. S.W.I.M. has never been accused of nimbly being not in my backward. And because of Northeastern scientists, they've made sure we always had the scientific facts straight. Nahant is a cleaner, safer place because of its history and its alliance with Northeastern.

In 2013, Paulie Bradley retired as the leader of S.W.I.M.. In the over forty-five years from 1967 to 2013, Northeastern University Marine Science professors and staff, backed Nahant in the long battle for secondary treatment, a long outfall, and over the years, they've given S.W.I.M. and the town hours and days of free scientific consultation that we could have never have afforded to pay for had they demanded expert consultations."

Northeastern has been essential in protecting the environment of Nahant. They are truly great neighbors. Thank you, Nahant, Northeastern, and S.W.I.M.'ers.

Paulie, Larry, and I ask you to join us in voting no on eminent domain.

(Applause.)

MR. BRADLEY: Mr. Moderator?
MODERATOR: Yes, sir.
MR. BRADLEY: I'd like to call the question.
(Applause.)
MODERATOR: You're not alone, but we are governed by town meeting time, and we're governed by what I've done always in the past. You can't get up and make a speech on the Article, and then call the question at the end of the speech. You've defeated the entire purpose of call the question.
MR. BRADLEY: Okay.
MODERATOR: And that's what I did to Mike earlier when he was going to start arguing about his motion to commit. I said you can't do that, 'cause its not arguable. So, we can't do that. But maybe some kind person behind you in line will make -- call the question.
(Applause.)
MS. POTTS: Emily Potts, 114 Pond Street.
MODERATOR: Yes, Emily?
MS. POTTS: Speaking as the president of the trust, I call the question.
(Applause.)
MODERATOR: The question has been called for. So, we are now voting and we can't -- can't debate on it.

The question is whether or not to cut off further debate. We've heard enough --

UNIDENTIFIED MALE: Second the motion.

MODERATOR: So, let us vote. Now, a lot of folks went out into the sun, because it's kind of -- the air conditioner, we've got it set too low. But we want to make sure that you get your signals on your devices while you're voting. So, if you don't get that green light, come in closer. All the transmitters are in the tent, so make sure that you get a green light and vote. So, we will now vote on the calling of the question.

If you want to cut off debate, vote yes. If you want to -- if you don't want to vote, you want to hear more, vote no.

All right. Has everybody voted? Let's -- let's start the ten second countdown.

You'll be glad to know it beat the two-thirds requirement. It's 862 to 33. So, the debate is called off; the debate is finished.

Now, we go to vote on the Article as read. So, if you are in favor of the motion on Article 22, vote yes; if you're opposed, vote no.

MODERATOR: Yes, point of order? Say something?

UNIDENTIFIED FEMALE: That's all right. It's

okay now. It's fine.

MODERATOR: Okay. Okay, you want to try the ten second?

CROWD: 5, 4, 3, 2, 1.

(Applause.)

MODERATOR: It's 647 in favor; 271 against. It's got to be a two-thirds? It's got to be a two-thirds vote though. Maybe two-thirds? All right. I'm informed that we passed the two-thirds majority vote that was required.

(Applause.)

MODERATOR: So, it's now about twenty after five and --

MR. MUSMAN: Mr. Moderator --

MODERATOR: -- and we are not --

MR. MUSMAN: Mr. Moderator?

MODERATOR: Yeah.

MR. MUSMAN: I would like to make a motion at this point.

MODERATOR: Yep?

MR. MUSMAN: I would like to move Article 21(v) ahead of Article 21(a) to be heard now in conjunction with the vote that just took place.

MODERATOR: Okay. We have a motion to take 21(v) out of order -- a majority vote.

OPEN SPACE & RECREATION MASTER PLAN

NOVEMBER 2016

EXHIBIT
tabbies
6
6-6-2023



PREPARED FOR
Open Space & Recreation Master Plan Committee
Town of Nahant

PR .PARED Y
VM Consulting Engineers, LLC
Victoria Masone, Pete Kane, Kurt Massey

CANOE BEACH

Zoning	NR
Size (Acres)	1.06
Surrounding Land Uses	Residential, Institutional, Open Space







SITE MAP

Existing Conditions

Canoe Beach itself is under private ownership (Northeastern University).

Accessed from Nahant Road near the intersection with Swallow Cave Road, this beach includes a parking area for nine vehicles (resident only). There are also ten on-street spaces available along Swallow Cave Road (also resident only). Lighting is provided within the parking area and Nahant Road. There's one small bicycle rack in poor condition next to the parking lot.

There are no sidewalks, requiring pedestrians to walk in Nahant Road. Similarly, there are no crosswalks to get to the park or beach. There's an old fence that runs along Nahant Road and the beach area in need of repair. A portion of the fence is wooden split rail while a larger portion (hidden by vegetation) is an old chain-link fence.

The beach and park areas are beautiful. The park area is well maintained while the beach is wide and stony though mostly covered during high tide. The park area features a flagpole and memorial rock. The rock is in memoriam of Corporal Richard R. Davis, U.S.M.C., and identifies the site as Memorial Point.

Signage in the area creates an uninviting experience. Similar to Black Rock Beach, there's a single, small red sign that identifies the beach and use limits. Below it however is a very large parking sign identifying the lot as resident-only. At the end of the parking area, there's a large red sign noticing visitors that they are entering Northeastern University property, that public access is allowed but parking is not.

There are some amenities available to beach and park users. Four benches are located in the park area along Nahant Road oriented toward the beach. There's a trash can and the only recycling can provided near the parking area though both are old and of different styles. Eight mature trees are scattered throughout the park area. Some young shrubs are located around the access point to a pumping station, most likely as a means to create screening.

Recommendations

Canoe Beach and Memorial Park are beautiful areas that can be further improved. The recommendations here are related specifically to usability and aesthetics.

OPTIMIZE CURRENT DESIGN

The pumping station located in the park is necessary but it could be better concealed. The young shrubs are a start, but additional methods should be considered such as wood fencing that will still provide easy access to the station. The trash and recycling cans could be replaced with cans of similar style; it'd be best to then to locate those cans near the picnic tables. The Town could consider replacing the fence along Nahant Road with a single style.

OPTIMIZE POTENTIAL

By installing sidewalks on both sides of the park area (along Nahant Road and Swallow Cave Road), pedestrian safety and access will be improved. The bicycle rack that's provided near the parking area is in need of replacement and should be installed on a concrete pad to further limit any theft.

Memorial Point park would also benefit from the installation of one or two picnic tables. The grass lawn area provides for easy picnicking but tables are more inviting and easier for some residents to use. Site-specific

signage should be installed near the entrance to identify both the beach and park area as well as provide use information. This site-specific signage should be more prominent than the parking restriction signage.

Consideration should be given to stabilizing the edge of the beach and roadway. The Short Beach Dune Grass Restoration Plan worked well along that portion of Nahant Road. Although the concept would be a scaled back version, the design principles could be applied at the site. The Town should consider engaging Northeastern University to see if a dune grass restoration plan could be developed across the beach line on both properties. If such work is to proceed, consideration should be given to install protective, rope fencing as exists at Short Beach.

P U A E

OPTIMIZE CURRENT DESIGN

Replace trash and recycling cans with cans of similar styles

Consider additional screening methods around the pump station

OPTIMIZE POTENTIAL

Install sidewalks on both sides of the park area (along Nahant Road and Swallow Cave Road)

Replace bicycle rack and set on a concrete pad

Provide one or two picnic tables

Site Signage - to identify the beach and park and provide use information (such as hours of operation, dog regulations)

Develop a dune grass restoration program along with Northeastern University

EXHIBIT 96

Volume I
Pages: 1-83
Exhibits: 0

COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS.	SUPERIOR COURT DEPARTMENT OF THE TRIAL COURT
TOWN OF NAHANT Plaintiff	
v.	DOCKET NUMBER 2177CV00936
12.5 ACRES OF LAND+/- SITUATED IN NAHANT, MASSACHUSETTS Defendant	

BOARD OF SELECTMEN MEETING

APPEARANCES:
Francis Barile, Chairman
Richard Lombard, Board of Selectmen Member
Chesley Taylor, Board of Selectmen, Member
Jeff Chelgren, Town Manager

On behalf of Northeastern:
Dan Smith
Jeff Trussell
John Tobin

Nahant, Massachusetts
February 15, 2018

Recording produced by digital audio recording system. Transcript produced by Approved Court Transcriber, Donna Holmes Dominguez

you. I'm going down memory lane for those of you who've been here as long as I have. As a kid, my friends and I would go to East Point to watch them raise and lower the Nikes, and we used to have a great time there. And in the winter, my friends and I would have snowball fights with the military men there, and we always had a blast up there because it was wide open. It was just fantastic. Now, that's my memory lane, and my transparency. I was contacted by a lobsterman, I'd say two -- two weeks ago, three weeks ago, it doesn't matter when, and it concerned just the pump house. And it became more and more apparent that I was not going to go to any meeting, because this is where it should have been.

Now, I have grave concerns with infrastructure, but you people have more concerns when you speak, so I'm not going to tell you all my concerns, but I'm really worried about the infrastructure. This is a nice, quiet town. My neighbors and I talk all winter about rolling up the sidewalks. We don't see each other. That's what this town is about. I've been here forever. I've been here forever, and I'm going -- I'm telling you, I'm 100% against this, 100% against it. And I -- I believe we should have -- this is the beginning. This is the beginning, as far as I'm concerned, of probably a long legal battle, but I say we do the battle. Now I received -- all of us, but I received plenty of -- plenty of emails and texts or whatever your young kids call it. But I want to read two of them. That

really struck home with me.

One, "I count on your leadership in our effort to preserve the beauty and peacefulness of Nahant." That really struck home. That was -- that -- that and the sign of someone with a big heart on it, "Save Nahant." That was beautiful. And two, "Please step up and help us protect and keep this wonderful and very special spot on Earth." Thank you.

CHAIRMAN BARILE: Okay. Mostly -- my my reasons for the injunction would be we don't know, they don't know, and we don't know where the easements are. They're referenced. No one can tell us where they are. They're not clearly defined. We haven't found a letter of intent from the government; that has yet to be found, what the intent was from Henry Cabot Lodge. Deeds that have restrictions are not clearly defined. Until the town can do a clear title search and survey and reference all these documents, it's my recommendation that we do immediately, you know, consider the Court injunction and that we go forward with that. And I'm going to read something, too. And this is back in, and I promised the Town Clerk I wouldn't ruin her books because I'll be -- I'll be in a lot of trouble. All right. Last year this is from 1964. Okay. "Last year, the town decided not to appropriate money for the purpose of acquiring the property from the federal government. The commission feels, however," and this is from the Conservation Commission by the way, "The Commission feels that at least it would be desirable

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

SUPERIOR COURT
CIVIL ACTION
No. 2177CV00936

TOWN OF NAHANT

vs.

12.5 ACRES OF LAND+/-
SITUATED IN NAHANT, MASSACHUSETTS,

and

NORTHEASTERN UNIVERSITY

MEMORANDUM OF DECISION AND ORDER ON TOWN OF NAHANT'S MOTION FOR SUMMARY JUDGMENT REGARDING CHALLENGE TO ITS INTENTION TO TAKE BY EMINENT DOMAIN (Paper No. 38) and NORTHEASTERN UNIVERSITY'S MOTION FOR SUMMARY JUDGMENT REGARDING ITS CHALLENGE TO TOWN OF NAHANT'S INTENTION TO TAKE BY EMINENT DOMAIN (Paper No. 39)

This action is another chapter in an ongoing dispute over a peninsula of land in Nahant, Massachusetts, known as East Point, a large portion of which has been owned and used by Northeastern University ("Northeastern") for its Marine Science Center ("MSC") since the mid-to-late 1960s.

After Northeastern announced plans in 2018 to expand the MSC facilities on East Point, the Town of Nahant ("Town"),[1] the Nahant Preservation Trust, Inc. ("NPT"), and a number of the town's residents filed suit seeking to stop the development plans on grounds that the land in question had been dedicated to public use (as an ecological preserve and for passive recreation) under Article 97 of the Amendments to the

[1] The Court will refer to the municipality of Nahant (and its agents) as "the Town," and will refer to Nahant as "the town" in all other instances.

Massachusetts Constitution, a claim that this Court rejected on summary judgment in certain consolidated actions.[2]

While the consolidated public dedication cases were pending before the court, the Town brought this action under G.L. c. 80A, § 1, *et. seq.*, to take by eminent domain certain conservation and access easements over a large portion of Northeastern's land (including a beach) on East Point. The easements would have the effect of forever prohibiting Northeastern from pursuing any and all development plans on its land.

Chapter 80A authorizes the landowner to contest the taking by "impugn[ing] the validity or regularity of the proceedings." G.L. c. 80A, §§ 5(3) and 7. Here, Northeastern "impugns" the validity of the taking by alleging that: (a) the Town is pursuing the taking in bad faith for an improper reason, i.e., to stop its proposed development plans; and, (b) the Town is pursuing the taking in bad faith to benefit private persons (and by allowing the private persons to "commandeer" the Town's taking authority). See Pheasant Ridge Assocs. Ltd. P'ship v. Burlington, 399 Mass. 771, 776 (1987)

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[2] By way of background, the opposition to its development plans prompted Northeastern to file suit in August 2019 against twenty-eight Nahant residents and the NPT in the Land Court seeking a declaration that it had not made a public dedication of the land at issue. See Northeastern University v. Nahant Preservation Trust, Inc., et al., No. 19MISC000390. Shortly thereafter, the NPT and others filed suit against Northeastern in the Superior Court, challenging Northeastern's plans on Article 97 and other grounds seeking, *inter alia*, a declaration that over fifty years earlier Northeastern had made unequivocal and clear statements of intent to dedicate to the public a portion of its land on East Point. See Nahant Preservation Trust, Inc., Town Of Nahant, et al. v. Northeastern University, No. 1977CV01211. Thereafter, the Chief Justice of the Trial Court ordered the transfer and consolidation of the two pending actions, and authorized the undersigned judge to sit as a Land Court judge to adjudicate both cases. In summer 2020, the Town was allowed to intervene in both lawsuits. See Northeastern University v. Nahant Preservation Trust, Inc., et al., No. 2177CV00186. As stated, summary judgment entered on behalf of Northeastern in those cases. The NPT and the Town appealed, and the Appeals Court heard oral argument on February 14, 2024. See Nahant Preservation Trust, Inc., et al. v. Northeastern University, No. 2023-P-0482. The appeal remains under advisement in the Appeals Court.

("Pheasant Ridge") (ruling taking of property for an improper reason, such as to block low income housing, is unlawful).

Now before the Court are: (1) the Town Of Nahant's Motion For Summary Judgment Regarding Northeastern University's Challenge To The Validity Of The Town's Order Of Intention To Take By Eminent Domain Pursuant To G.L. c. 80A (Paper No. 38) ("Town's Motion"); and, (2) the Respondent's Motion For Summary Judgment On Plaintiff's Claims (Paper No. 39) ("NU's Motion").[3]

As is explained below, following a hearing on the parties' motions on January 26, 2024, consideration of the parties' submissions, arguments of counsel at the hearing, and a thorough review of the record, when viewed in favor of the Town, the record evidence clearly shows that the dominant reason for the Town's taking is not to preserve the East Point Easement Areas (hereinafter defined) for open space and conservation purposes, as the Town claims; but, rather to stop Northeastern's development project because it would purportedly detract from the town's scenic and residential nature. Therefore, the Court must rule as a matter of law that Northeastern has proven its pretextual bad faith taking affirmative defense and has, consequently, impugned the validity of the taking in accordance with G.L. c. 80A, § 7. For those reasons, the Town's Motion must be **DENIED in part** and the NU's Motion must be **ALLOWED in part**.

[3] The title of NU's Motion is a bit of a misnomer because the Town asserts no "claims" in this matter. Rather, it is Northeastern that claims (by way of affirmative defenses), and has the burden to show, that the taking is unlawful because it is being done in bad faith. In essence, in NU's Motion, Northeastern seeks entry of summary judgment on its bad faith taking affirmative defenses.

BACKGROUND

The following facts are taken from the parties' Statements of Facts (see Paper Nos. 38.2 and 39.1) and the voluminous summary judgment record, which spans six volumes and is in excess of 3,300 pages (see Paper No. 39.4).[4, 5]

A. The Geography And Governance Of The Town

The town is small and densely populated. It is located on a peninsula in the Massachusetts Bay and is connected to the mainland by a single causeway, Nahant Road.

The Town is governed by a three-member Board of Selectmen ("BoS" or "Board") and by an Open Town Meeting, which is usually held annually and referred to as the Annual Town Meeting ("ATM"). Special Town Meetings are held from time-to-time, as well. Town Meetings are convened pursuant to a warrant issued by the BoS.[6]

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[4] Additional relevant facts are discussed, *infra*, in the Court's Discussion section.

[5] In many instances in their responses to the opposing party's Statements of Facts, the parties dispute what a document in the summary judgment record says or means, what a deponent said or did not say at their deposition, and what was said by whom at public Board of Selectmen meetings. For example, there are numerous instances where Northeastern asserted that the Town's Rule 30(b)(6) designee "admitted" something or purportedly could offer no evidence of something, and the Town disputed Northeastern's characterization of the testimony. See Plaintiff's Responses To Respondents Statement Of Undisputed Facts Pursuant To Superior Court Rule 9A(b)(5), Nos. 21, 24, 42, 58, 62, 66, and 69 (Paper No. 39.1). Given the voluminous record and the shifting landscape of the Court's view of the facts because "the parties have cross-moved for summary judgment," Dzung Duy Nguyen v. Massachusetts Institute of Technology, 479 Mass. 436, 448 (2018), this has unnecessarily complicated the Court's effort in determining whether material issues of fact are genuinely in dispute.

[6] Generally speaking, the warrant is subject to G.L. c. 39, § 10, and "must state the time and place of the meeting and the subjects on which to be acted." Boss v. Leverett, 484 Mass. 553, 554 n.2 (2020).

The members of the Board are elected by the voters of the town and serve a term of three years. The Town Administrator, who is appointed by the BoS, manages and supports the various Town departments, boards, and committees.

One such committee is the Advisory and Finance Committee ("FinCom"), which consists of eight members. The FinCom is the fiscal and managerial watchdog of the Town. In advance of the ATM, FinCom makes recommendations about whether the Town Meeting members should vote in favor of an Article appearing on the Town Warrant.

The Town's Open Space Committee ("OSC") is responsible for, among other things, developing an open space management plan and studying opportunities to protect land for public purposes.

In 2004, the Town adopted the Massachusetts Community Preservation Act, G.L. c. 44B, § 1 et seq. ("CPA"), and established a Community Preservation Committee ("CPC"). See id. at § 5 (requiring establishment of CPC by municipality upon acceptance of CPA). The Town implemented a 3% CPA property tax surcharge rate. See id. at § 4 (requiring imposition of surcharge upon acceptance of CPA by municipality); Ex. 71, p. 1947. Since 2008, the CPC and the BoS have approved approximately 34 open space and recreation-related projects. Ex. 4, p. 0380.

B. The Parties' Land Ownership On East Point

The area that the parties generally refer to as "East Point" is an approximately 28.7-acre peninsula at Nahant's easternmost tip.[7] Vehicular access to East Point is by one public way, Nahant Road (i.e., the same road that connects the town, itself a peninsula, to the mainland).

In 1941, the federal government acquired East Point by eminent domain and turned the land over to the United States military, which began to use it for military purposes.

In the early 1960s, the federal government decommissioned the military facilities.

In 1966, the federal government transferred a 20.4-acre portion of its 28.7 acres on East Point to Northeastern ("NU Property"), retaining the benefit of a 20-foot wide easement across the NU Property to the federal government's remaining 8.3 acre parcel. The deed to the NU Property contained several restrictions, including a requirement that the property "be utilized continuously . . . for [] educational purposes" for twenty years.

In 1975, the federal government transferred its remaining 8.3-acre parcel on East Point to the Town, which the Town turned into a public park in 1986 known as Lodge Park. The federal government conveyed the parcel to the Town with the benefit of the

[7] The parties dispute the size of East Point and its precise boundaries, with the Town claiming it is 28.44 acres. This dispute is immaterial to the Court's decision. As discussed below, the genesis for the parties' ownership of their respective parcels on East Point was the taking of 28.7 acres by the federal government in 1941. Thereafter, the federal government transferred 20.4 acres to Northeastern and 8.3 acres to the Town. As for the boundaries of East Point, the record reflects that there are private homes on land (presumably, private property) that could be considered part of "East Point," which are presumably not within the aforementioned 28.7 acres owned by the parties. Nevertheless, the Court will, like the parties, refer to the 28.7 acres of land that the parties collectively own as "East Point."

aforementioned 20-foot wide easement across the NU Property that it had previously reserved when conveying the NU Property to Northeastern. This easement serves as the sole access to Lodge Park.

At the 1988 ATM, Town Meeting members approved the delegation of stewardship of Lodge Park to the OSC. Lodge Park has been located in the Town's Natural Resource Zoning District ("NRZD") since 1990 when the NRZD was first created.

The westerly (approximately) 8 acres of the 20.4-acre NU Property is improved and used by Northeastern as its MSC campus ("MSC Campus Parcel"). Lodge Park abuts the MSC Campus Parcel to the east. To be sure, the MSC Campus Parcel is located between "a highly residential area[] and Lodge Park." Ex. 96, p. 3194.

The MSC Campus Parcel contains parking lots, and several buildings and structures, many of which are repurposed former military structures and bunkers remaining from the federal government's military use of East Point. The largest of the former military bunkers is the "Murphy Bunker" (also known as "Murphy Battery") which contains the MSC classrooms and laboratories. Other than a solar observatory erected in 1995, and removed in 2018, no permanent structure has been built on the MSC Campus Parcel east of the Murphy Bunker since 1966.

As of 2021, the NU Property east of the Murphy Bunker is primarily vegetated and contains uplands, a coastal beach, and wetlands, including coastal wetlands. Previously disturbed areas associated with the former military bunkers, including the area above the bunkers, are now primarily wooded.

C. Northeastern's Development Plans And The Town's Reaction

On February 15, 2018, at a public meeting of the BoS, which was attended by a number of Nahant citizens, including members of the NPT,[8] Northeastern presented plans to expand the MSC and, *inter alia*, build a 55,000[9] square foot structure partially within and partially atop the Murphy Bunker ("Project").[10, 11] The new building would house new laboratory, classroom, and research space, and would support the MSC's Coastal Sustainability Institute, which would "continue to address the many challenges facing coastal ecosystems and communities." Ex 96, p. 3191. The new building would accommodate 228 persons including faculty, PHD candidates, and undergraduate students. Ex. 53, p. 1326.

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[8] The NPT is a Massachusetts nonprofit, volunteer corporation dedicated to preservation. One way it promotes the preservation of open space is by holding conservation restrictions on donated or purchased properties. The NPT opposes Northeastern's proposed expansion of the MSC.

[9] The record reflects that the plans announced at the meeting by Northeastern called for the new building to be 60,000 square feet. See e.g., Ex. 96, pp. 3207, 3222. However, sometime thereafter, Northeastern revised the plans and proposed building a 55,000 square foot building, rather than 60,000 square feet. The parties uniformly refer to the size of the proposed building for the Project as being 55,000 square feet. Accordingly, the Court will do likewise. This discrepancy is not material to the Court's decision.

[10] In January 2018, if not earlier, Northeastern made public its intent to pursue the Project, and apparently showed members of the BoS and others "conceptual plans" for an expansion of the MSC. See Ex. 96, p. 3190 (at the February 15 public meeting, the director of the MSC stated that, "**[o]ver the past few weeks**, it has become very clear to me that the Nahant community has significant concerns about our proposed plans at the Marine Science Center") (emphasis added).

[11] To be clear, the most contested aspect of the Project is the 55,000 square foot building expansion, which would occur on the MSC Campus Parcel. In fact, audience members openly booed when Northeastern discussed the location of the proposed building. See Ex. 96, p. 3199.

In the summer of 2018, Northeastern met with a number of Nahant residents about the scope of the Project, and as a result of those discussions made significant modifications to the Project, which Northeastern publicly presented at a BoS meeting on December 11, 2018.

In approximately June 2019, Northeastern commenced pre-construction activities for the Project. It conducted exploratory soil and geotechnical testing of the NU Property, clearing approximately one-half-acre of land located east of the Murphy Bunker and within the MSC Campus Parcel.[12]

Beginning around the same time, Northeastern filed environmental notifications and impact reports under the Massachusetts Environmental Policy Act ("MEPA"), which received hundreds of comments expressing significant concern with siting the facility on East Point.

D. ATM Vote On The Proposed Taking

In March 2020, in advance of the then-scheduled May 2020 ATM, the BoS issued to Nahant citizens a statement regarding the proposed taking ("First Statement"), wherein the BoS stated that its goal was to forever preserve what it referred to as "the Wildlife Preserve." The First Statement said the BoS's "only goal is to save the Wildlife Preserve and rights to Canoe Beach. Northeastern University's current (and 50+ year history of) use and activities are not to be disturbed." Ex. 70, p. 1929.

On March 23, 2020, the CPC voted to recommend to the Town Meeting members that they authorize the Town to borrow $1,500,000, which would be paid back with CPC Funds. Thereafter, the 2020 ATM was cancelled due to the COVID pandemic.

[12] This prompted the aforementioned "public dedication" litigation.

On August 21, 2020, the BoS sent a second written statement to Nahant citizens regarding the proposed taking ("Second Statement") wherein it argued that, *inter alia*, "in the long run your tax burden will be less if East Point remains undeveloped via eminent domain." Ex. 71, p. 1936.

In advance of the 2021 ATM, the FinCom published its Report and Recommendation regarding the proposed taking. The FinCom reported that the Project would cost the Town between $16.9 and $21.7 million in capital and infrastructure expenses over a 40-year period. Ex. 74, p. 1966.

Prior to the 2021 ATM being called to order on May 15, 2021, the FinCom voted 6-2 to recommend that the Town Meeting members approve Article 22 of the warrant, which stated that:

> ARTICLE 22. (Authorize Acquisition) To see if the Town will vote to authorize the Board of Selectmen to acquire, by gift, negotiated purchase, eminent domain taking (pursuant to c. 80A exclusively), or otherwise, the fee simple interest or any lesser interest in all or a portion of the land located at 430 Nahant Road, Nahant, [shown on Assessors Map/Lot as 1B-0-1,] and described in a deed recorded with the Essex South District Registry of Deeds in Book 5344, Page 142, and in Certificate #47172, **for open space, recreation, conservation and/or historic preservation purposes** and **an easement to use certain portions for beach purposes** as shown on a plan on file with the Town Clerk, **subject to the receipt by the Town of grants or gifts in the amount of at least $3,000,000**, or such larger amount as shall be required, together with the amount appropriated as described below, **to pay the purchase price or *pro tanto* amount, as the case may be, and all costs incidental or related thereto, and to take any other action relative thereto**.

Ex. 76, p. 2259 (emphasis added).

The Town Meeting members were also asked to vote on Article 21(V) of the warrant, which was the CPC's grant recommendation relating to the proposed taking, as follows in pertinent part:

> Sub-Article 21V. To appropriate through borrowing the sum of $1,500,000 to pay a portion of the costs to acquire the fee simple or a lesser interest in all or a portion of the land located at 430 Nahant Road, Nahant, [shown on Assessors Map/Lot as 1B-0-1,] and described in a deed recorded with the Essex South District Registry of Deeds in Book 5344, Page 142, and in Certificate #47172, **for open space, recreation, conservation and/or historic preservation purposes and an easement to use certain portions for beach purposes** as shown on a plan on file with the Town Clerk, including the payment of all costs incidental or related thereto, [the expenditure of which is] **subject to:**
>
> (i) a vote of the Town to acquire the above-described property, and
>
> (ii) **the receipt by the Town of grants or gifts in the amount of at least $3,000,000** or such larger amount as shall be required, together with the amount appropriated at this Town Meeting, to pay the purchase price or pro tanto amount, as the case may be, of acquiring such interest in the above-described property,
>
> and, further, the Treasurer, with the approval of the Board of Selectmen, is authorized to borrow the sum of $1,500,000 under G.L. c. 44B, G.L. c. 44, §7, 8, or any other enabling authority. . . .

Ex. 76, p. 2258 (emphasis added).

Town Meeting members voted to approve Article 22 by a vote of 647 to 271 (i.e., 70%), and Article 21(V) by a vote of 655 to 14.

On September 8, 2021, the BoS held a public meeting and, pursuant to the authority granted to them by the votes at the ATM, voted to issue the Town's Order Of Intention To Take Conservation Easement By Eminent Domain ("Order Of Intention"), declaring the Town's intent to take the Subject Property Rights, hereinafter defined, under G.L. c. 80A.

E. The Property Rights Subject To The Proposed Taking

According to the Order Of Intention, the property interests the Town seeks to take under c. 80A are two conservation easements and an access easement over a 12.274-acre portion of the 20.4-acre NU Property.

One of the conservation easements affects 2.648 acres of the NU Property ("Conservation Easement Area A"). The other conservation easement affects 9.626 acres ("Conservation Easement Area B") (collectively, "East Point Easement Areas").

Most of Northeastern's existing buildings and structures, including the existing building at which the Project's 55,000 square foot building expansion would occur, are located in Conservation Easement Area B.

The access easement will grant the public the right to access and use, for outdoor recreational purposes, the .799-acre Canoe Beach recreation area, which is within Conservation Easement Area B.

The conservation easements will prohibit building, excavating, dredging, or improving of the East Point Easement Areas, but will grant Northeastern the right to maintain and use buildings, structures and other improvements located on the East Point Easement Areas as of September 8, 2021.

The East Point Easement Areas encompass a total of 12.274 acres of the NU Property on East Point, leaving the mostly undeveloped 8.024 acres of the NU Property unaffected by the proposed taking.[13] However, because the 55,000 square foot building expansion and other aspects of the Project would occur within Conservation Easement

[13] The Court will refer to the conservation easements and access easement that the Town is seeking to take collectively as the "Subject Property Rights," which, again, affect 12.274 acres (i.e., the East Point Easement Areas) of Northeastern's 20.4 acres on East Point.

Area B, the Project and any other development or expansion of the MSC campus would be forever prohibited.

F. <u>The Expressed Purpose And Public Benefits Of The Taking</u>

The Order Of Intention states that "the purpose of [the] taking is to preserve the East Point Easement Areas . . . in perpetuity in their natural, scenic, and open condition and to protect against any use of the East Point Easement Areas that will interfere with the conservation values of said property." Ex. 81, p. 1.

As for the public benefits that the Town envisions from the taking, according to the Order Of Intention:

> The public benefits resulting from conservation of the East Point Easement Areas . . . include . . . : the preservation of open space for the use and enjoyment of the general public, the creation and buffering of an expanded [Lodge Park], the protection of the scenic and natural beauty and character of the East Point Easement Areas, the protection of public access to the sea, the protection of wildlife habitat, wildlife connectivity and biodiversity, the reduction of pollution and improvement of air quality, the provision of a buffer to sea level rise, the promotion of resiliency and protection against climate changes, and the protection of the public passive recreational use of the land.

Ex. 81, p. 1.

In sum, there is no dispute that the Town's stated public purpose in pursuing the taking of the Subject Property Rights, which is reflected in the Order of Intention, may be distilled to the following: the preservation of the East Point Easement Areas for open space and conservation purposes.[14]

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[14] More specifically, according to the warrant approved by the town's voters at the 2021 ATM, the voters authorized the taking "for open space, recreation, conservation and/or historic preservation purposes." In response, the BoS announced in the Order Of Intention that the Town's purpose is "to preserve the East Point Easement Areas . . . in perpetuity in their natural, scenic, and open condition and to protect against any use of the East Point Easement Areas that will interfere with the conservation values of said property." The phrase "conservation

DISCUSSION

In this taking action brought by the Town under G.L. c. 80A, Northeastern "impugn[s] the validity or regularity of the [Town's taking] proceedings," G.L. c. 80A, § 7, in a series of affirmative defenses asserted in its amended answer.

As is borne out in Northeastern's arguments on summary judgment, the affirmative defenses are properly categorized into two legal theories. First, that the Town is acting in bad faith because its purported public purpose for the taking is a pretextual effort to stop Northeastern's development. Second, that the Town is acting in bad faith because it has allowed private citizens to "commandeer" its eminent domain authority to benefit themselves, and not the town, as a whole. After setting forth the applicable legal framework, the Court will first address the former theory.

I. LEGAL FRAMEWORK

A. Summary Judgment Standard

When, like here, a court is presented with cross motions for summary judgment, the standard of review is identical for both motions. See Dzung Duy Nguyen, 479 Mass. at 448 ("Where the parties have cross-moved for summary judgment, we review a grant of summary judgment de novo to determine whether, viewing the evidence in the light most favorable to the unsuccessful opposing party and drawing all permissible

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values" is defined in the Order Of Intention to include "the preservation of open space for the use and enjoyment of the general public," and the protection of, *inter alia*: (a) the scenic and natural beauty and character of the East Point Easement Areas; (b) the public access to the sea; (c) the wildlife habitat; and, (d) the public passive recreational use. Nevertheless, the Court will refer to the public purpose herein in the same manner that the Town does in its submissions: the preservation of the East Point Easement Areas for open space and conservation purposes.

inferences and resolving any evidentiary conflicts in that party's favor, the successful opposing party is entitled to judgment as a matter of law.").

A motion for summary judgment may be granted "if the pleadings, depositions, answers to interrogatories, and responses to requests for admission under Rule 36, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Mass. R. Civ. P. 56(c). "The moving party has the burden of demonstrating affirmatively the absence of a genuine issue of material fact on every relevant issue, regardless of who would have the burden on that issue at trial." Arcidi v. NAGE, Inc., 447 Mass. 616, 619 (2006).

"While the nonmoving party is 'not required to set forth [its] entire defense to the [movant's] claims to defeat a motion for summary judgment, . . . [the nonmovant is], of course, required to produce evidence sufficient to create a genuine dispute of material fact.' . . . Otherwise, 'summary judgment, if appropriate, shall be entered against [it].'" Le Fort Enters., Inc. v. Lantern 18, LLC, 491 Mass. 144, 149 (2023) (citation omitted).

Moreover, "[i]n deciding a motion for summary judgment, the motion judge must consider all factual allegations, and draw all reasonable inferences therefrom, in favor of the nonmoving party." Godfrey v. Globe Newspaper Co., Inc., 457 Mass. 113, 119 (2010). However, although the Court views the evidence in the light most favorable to the non-moving party, it does not weigh evidence, assess credibility, or find facts. Drakopoulos v. United States Bank Nat'l Ass'n, 465 Mass. 775, 788 (2013) (citation omitted).

B. The Law Of Takings Under G.L. c. 80A

"To be constitutional [under the Takings Clause of the Fifth Amendment to the United States Constitution and Article X of the Massachusetts Declaration of Rights], a taking must be made for a legitimate public purpose and the landowner must receive just compensation." Cobble Hill Ctr. LLC v. Somerville Redevelopment Auth., 487 Mass. 249, 262 (2021); see also Benevolent & Protective Order of Elks, Lodge No. 65 v. Planning Bd. of Lawrence, 403 Mass. 531, 539 (1988) ("Elks, Lodge No. 65") ("Exercising the power of eminent domain is improper unless the taking is for a public purpose.") (citing Art. X of the Massachusetts Declaration of Rights).

Generally speaking, most eminent domain takings in Massachusetts are conducted pursuant to G.L. c. 79, which, *inter alia*, sets forth the procedures a municipality must follow. On the other hand, G.L. c. 80A, "authorizes eminent domain proceedings quite unlike those under G.L. c. 79." Swampscott v. Remis, 350 Mass. 523, 525 (1966).

As is pertinent here:

> Under c. 80A a board of the town must adopt an order of an intention to make a taking (§ 2), notice of which must be sent to interested parties by registered mail forthwith, and must be posted on the land, and the order (of intention) must be recorded in the registry of deeds within ten days after its adoption (§ 3). **Within ten days of recording, a petition instituting a proceeding in rem is to be filed in the Superior Court (§ 4). If the answer impugns validity or regularity of the proceedings (§ 5), the issue is heard before further hearings (§ 7)**. If an order is entered (in the Superior Court) establishing the right to take, commissioners are appointed to hear and determine any issue as to the sufficiency of compensation or damages (§ 8). Following the establishment of the right to take, the court on motion of the petitioner enters an interlocutory judgment of condemnation (§ 11). Any person aggrieved by the determination of the commissioners with respect to his compensation or damages may have a jury redetermine these issues, and the commissioners'

> report is amended accordingly (§§ 9, 10). The report, as amended, shall be presented to the Superior Court for confirmation.

Id. at 525 – 526 (emphasis added).

Here, the Town filed the Petition To Take Property (Paper No. 1) and, in response, Northeastern filed an amended answer (Paper No. 15) in which Northeastern "impugn[ed] the validity . . . of the proceedings." G.L. c. 80A, § 7. Therefore, the Court must "forthwith hear and determine the issue thus raised." Id. The Court does so now on summary judgment.

C. The Law Of Bad Faith Takings

It is axiomatic that "a municipal land taking, proper on its face, may be invalid because it was taken in bad faith." Pheasant Ridge, 399 Mass. at 775.

In Pheasant Ridge, "[t]he defendant town, acting through its selectmen, purported to take a 14.5 acre parcel . . . pursuant to a unanimous vote of a . . . town meeting. The town voted to take the property 'for the purpose of parks, recreation, and the construction of moderate income housing which w[ould] be subject to the review and approval of Town Meeting.'" Id. at 772.[15] "At the time of the town's purported taking, the . . . parcel was the subject of [the plaintiffs'] application . . . for a comprehensive permit under what is sometimes called the Anti-Snob Zoning Act[, i.e., G.L. c. 40B, §§ 20 – 23]," id. at 773, to build more than 200 "apartment units of which at least twenty percent would be available for low and moderate income housing." Id.

[15] There is a dearth of reported decisions that have addressed takings under G.L. c. 80A. The taking in Pheasant Ridge was conducted pursuant to G.L. c. 79. Nevertheless, the parties agree the bad faith taking legal principles addressed by the SJC in Pheasant Ridge are controlling here.

The plaintiffs in Pheasant Ridge filed suit in Superior Court and argued that the taking was invalid because the town's real reason for taking the property was to stop their development of low and moderate income housing. Id. at 774. The Superior Court concluded that the town conducted the taking in bad faith and granted the plaintiffs' motion for summary judgment on that issue, and the town appealed. Id. The SJC granted the town's application for direct appellate review and affirmed, "hold[ing] that a municipal land taking, proper on its face, may be invalid because it was undertaken in bad faith and that, . . . because there [wa]s no dispute as to any material fact on the issue of bad faith, the judge properly entered summary judgment for the plaintiffs on this issue." Id. at 775.

In so holding, the SJC recognized that "[p]revious challenges to the motives behind municipal land takings that have appeared facially valid ha[d] been unsuccessful on their facts in this court." Id. (citing cases). Nevertheless, the SJC described two broad examples of bad faith takings that it had acknowledged in previous rulings where "the exercise of the power of eminent domain may be successfully challenged." Id. Those examples were (1) "the use of the power solely to benefit some private person or persons," id., and (2) "the use of the power of eminent domain solely for a reason that is not proper, although the stated public purpose or purposes for the taking are plainly valid ones." Id. at 776.

As for the latter example, i.e., a "pretextual" bad faith taking, the SJC in Pheasant Ridge stated:

> It is not easy to prove that particular municipal action was taken in bad faith. This is particularly true where the significant event is an affirmative vote (here at least a two-thirds vote) of the persons voting at a town meeting on a motion to take a particular parcel of land.

> Challenges to town meeting action based on a claim that unlawful, improper, or erroneous reasons were advanced at town meeting or elsewhere in support of the challenged action have been unsuccessful. . . . We should not easily attribute improper motives to a town, and to its citizens voting at town meeting, if there were valid reasons that would have supported the town's action.

Id. at 776 – 777 (citations omitted).

Nevertheless, the SJC observed that it is possible to prove a "pretextual" bad faith taking, pointing out that its "[r]ecognition in . . . [prior] cases that a bad faith land taking [c]ould be [deemed] unlawful inevitably assumes that it would be possible to prove the bad faith of a town." Id. at 777. Thereafter, the SJC noted that "[t]here are certain motives or reasons that would be unlawful if they were the dominant reasons for the town's taking. Clearly, taking land solely to block G.L. c. 40B, § 21, low or moderate income housing would be improper." Id.

In Pheasant Ridge, the SJC ruled that the town's bad faith was obvious in the summary judgment record and pointed to the following evidence: (1) the town's expressed concern about the impact of the developer's project on the town's infrastructure was belied by the town not trying to take land at which a larger c. 40B project was then-being developed in the town, id. 777 – 778; (2) there was no evidence the town truly intended to use the land for parks, recreation, or to build moderate housing, such as by showing a previous interest by the town in the site, id. at 778; (3) none of the town's departments or committees were consulted before the taking was announced at the town meeting for a vote, such as the parks department, finance committee, etc., i.e., "[t]he manner in which the town dealt with the attempted acquisition of the subject parcel was not in accord with its usual practices," id.; (4) the board of selectmen developed the purposes for the taking only minutes before the town

meeting vote, id.; and, (5) the chairman of the select board told the town meeting that the taking of the land would nullify the plaintiffs' c. 40B application. Id. at 779 n.8.[16]

With these standards and legal principles in mind, the Court will address the merits of the parties' motions.

II. WHEN VIEWING THE EVIDENCE IN THE LIGHT MOST FAVORABLE TO THE TOWN, THE COURT MUST RULE AS A MATTER OF LAW THAT THE TOWN IS ENGAGING IN A PRETEXTUAL BAD FAITH TAKING OF THE SUBJECT PROPERTY RIGHTS

In the Town's Motion, the Town argues that it should be awarded summary judgment on Northeastern's pretextual bad faith taking affirmative defense because undisputed evidence in the record shows that Northeastern "has no reasonable expectation of proving an essential element of [its bad faith taking] claim," Williams v. Steward Health Care Sys., LLC, 480 Mass. 286, 290 (2018); namely, that the Town is using its taking power "solely for a reason that is not proper, [i.e., to stop Northeastern's development plans] although the stated public purpose or purposes for the taking are plainly valid ones." Pheasant Ridge, 399 Mass. at 776. See Kelly v. Town of Chelmsford, 2007 Mass. App. LEXIS 1118, *2 (affirming grant of summary judgment on behalf of town where plaintiff "ha[d] no reasonable expectation of proving his [bad faith taking] case"); see also DeWeese-Boyd v. Gordon Coll., 487 Mass. 31, 43 (2021) (ruling that, on summary judgment, "[t]he employer who asserts the ministerial exception as an affirmative defense has the burden of proving it.").

[16] In addressing claims of "pretextual" bad faith taking after Pheasant Ridge, it appears that our appellate courts have emphasized two factors: "[(1)] whether the municipality has evinced prior interest in the area or its neighborhood, and [(2)] whether its method of acquiring the property accords with usual practices." Elks, Lodge No. 65, 403 Mass. at 552.

For its part, in NU's Motion, Northeastern argues that, when viewing the record evidence in the light most favorable to the Town, there are no genuine issues of material fact and judgment must enter as a matter of law on its pretextual bad faith taking affirmative defense.[17]

A. Northeastern's Burden Is To Prove That The Town's "Dominant" (Not The "Sole") Reason For The Taking Was Improper

As an initial matter, the Court must address a dispute between the parties regarding Northeastern's burden of proof. The Town argues that, to prove its bad faith taking claims under either of its two theories, Northeastern must prove that the "**sole**" **reason** for the taking was improper, rather than the expressed public purpose. See Pheasant Ridge, 399 Mass. at 775 – 776. On the other hand, Northeastern asserts that it must show that the "**dominant**" (not sole) **reason** for the taking was improper. The Court agrees with Northeastern.

While the SJC in Pheasant Ridge used both phrases when explaining its holding "that a municipal land taking, proper on its face, may be invalid because it was undertaken in bad faith," id. at 775, it ultimately ruled that "[t]here are certain motives or reasons that would be unlawful if they were the **dominant reasons** for the town's taking[, such as] taking land solely to block . . . low or moderate income housing." Id. at

[17] It must be emphasized that both parties argue in their cross-motions that no genuine issues of material fact exist in the record and, thus, that the Court should rule as a matter of law on Northeastern's pretextual bad faith taking affirmative defense. In fact, at the hearing on the Motions, the Town vehemently disagreed with the Court when it expressed concern that, at first blush, the summary judgment record arguably reflects the existence of issues of fact that may preclude granting either Motion, especially as it related to Northeastern's private benefit bad faith taking affirmative defense. As will be discussed, after exhaustive review of the summary judgment record, the Court agrees with both parties regarding the absence of genuine issues of material fact as to Northeastern's pretextual bad faith taking affirmative defense.

777 (emphasis added). In so ruling, the SJC explained that "[it] need not define **dominant reason** with precision in order to decide this case. A showing here that this taking occurred **only** for the unlawful reason that the town wanted to block the plaintiffs' development is surely enough." Id. at 777 n.5 (emphasis added). The SJC's explanation reflects that, although the developer showed in Pheasant Ridge that the **only** or **sole** reason for the taking was improper, the standard the SJC applied was the dominant reason standard.

To be sure, in Pheasant Ridge, the SJC cited Despatchers' Cafe, Inc. v. Somerville Hous. Auth., 332 Mass. 259, 263 (1955), for the proposition that, "[c]ertainly, the use of the power **solely** to benefit some private person or persons would be action taken in bad faith and grounds for declaring a taking invalid." Pheasant Ridge, 399 Mass. at 775 (emphasis added). Nevertheless, in Despatchers' Café, Inc., the SJC observed that "[t]here are some references to financial advantages to the city that might be expected from the project, but these fall far short of indicating that the **dominant** purpose was other than to eliminate a substandard and decadent area by clearing it and then putting it to the best available use." Id. (emphasis added). Thus, in Pheasant Ridge, the SJC applied the "dominant purpose" standard.

Moreover, many subsequent appellate decisions support the Court's view that Northeastern has the burden to show that the dominant, not the sole, reason for the taking was improper. See e.g., Durand v. IDC Bellingham, L.L.C., 440 Mass. 45, 58 (2003) (Spina, J., dissenting) ("The vote of a town meeting, valid on its face, may be invalid if it can be shown that the **dominant motives or reasons** for the action were unlawful.") (emphasis added); Elks, Lodge No. 65, 403 Mass. at 551 (stating we "have

suggested that '[t]here are certain motives or reasons that would be unlawful if they were the **dominant reasons** for [a] . . . taking," and ruling "[t]he [trial] judge correctly concluded that the **predominant motive** behind the project was to eliminate a blighted open area") (emphasis added); Nantasket Beachfront Condos., LLC v. Hull Redevelopment Auth., 87 Mass. App. Ct. 455, 464 (2015) (citing Pheasant Ridge, stating in breach of contract action against redevelopment agency that "there are exceptional cases where courts have invalidated an otherwise valid public action based on proof that the '**dominant** reason' the action was undertaken was an improper one.") (emphasis added); HTA Ltd. P'ship v. Mass. Tpk. Auth., 51 Mass. App. Ct. 449, 457 (2001) (ruling that "[i]f the sole, or **at least the dominant**, reason for taking the property was to build a park and ride facility for the benefit of the public, then the taking would be proper.") (emphasis added).

In sum, Northeastern must prove that the dominant reason that the Town seeks to take the Subject Property Rights is improper, and not for the stated reason of preserving the East Point Easement Areas for open space and conservation purposes.

B. There Is No Dispute That The Town Has Complied With c. 80A And That Northeastern Is *Not* Impugning "The Regularity Of The Proceedings"

Another initial matter that the Court must address is that there is no dispute that the Town has properly petitioned the court to take the Subject Property Rights and has otherwise complied with G.L. c. 80A, §§ 2 – 4. Likewise, there is no dispute that Northeastern is a "person claiming an interest in any of the land to be taken," G.L. c. 80A, § 5, and that it properly filed an amended answer to the Town's petition "impugn[ing] the validity . . . of the proceedings for [the] taking." Id.

Therefore, there is no dispute that Northeastern is "impugn[ing] the **validity . . . of the proceedings**" in this action, id. at § 7 (emphasis added), and that it is not "impugn[ing] the . . . **regularity of the proceedings**." Id. (emphasis added).

C. The Public Purpose For The Town's Taking Of The Subject Property Rights Is "Proper On Its Face"

"That the power of eminent domain may be exercised only for a public purpose is elementary law." Luke v. Mass. Tpk. Auth., 337 Mass. 304, 309 (1958); see Lingle v. Chevron U.S.A. Inc., 544 U.S. 528, 543 (2005) (ruling that, under the Takings Clause of the Fifth Amendment, "if a government action is found to be impermissible -- for instance because it fails to meet the 'public use' requirement or is so arbitrary as to violate due process -- that is the end of the inquiry. No amount of compensation can authorize such action."). Further, "[t]he necessity or expediency of the exercise of eminent domain is a legislative function, but whether the purpose is a public one is subject to judicial review." Burnham v. Beverly, 309 Mass. 388, 390 (1941).

Here, the Town's stated purpose in seeking to take the Subject Property Rights is the preservation of the East Point Easement Areas for open space and conservation purposes. The Town argues conservation of land is a valid "public purpose."[18]

The Court has little difficulty in agreeing with the Town and ruling that the Town's purported public purpose for taking the Subject Property Rights, the preservation of the East Point Easement Areas for open space and conservation purposes, is facially

[18] Northeastern does not meaningfully argue otherwise. To be sure, in NU's Motion "Northeastern does not dispute that under some circumstances, a taking authority may utilize eminent domain to protect land determined to be environmentally sensitive." See NU's Motion, p. 12 (Paper No. 39).

proper (i.e., the public purpose of the Town's taking of the Subject Property Rights is "proper on its face." Pheasant Ridge, 399 Mass. at 775).

Such a ruling is supported by Article 97 of the Amendments to the Massachusetts Constitution, which provides, in pertinent part, that:

> The people shall have the right to clean air and water, freedom from excessive and unnecessary noise, and the natural, scenic, historic, and esthetic qualities of their environment; and **the protection of the people in their right to the conservation, development and utilization of the agricultural, mineral, forest, water, air and other natural resources is hereby declared to be a public purpose**.

Id. (emphasis added); see also Koontz v. St. Johns River Water Mgmt. Dist., 570 U.S. 595, 607 - 609 (2013) (ruling that water management district's conditioning of approval of land-use permit on conveying a conservation easement over significant portion of landowner's land would violate the Fifth Amendment's Takings Clause); Chelmsford v. DiBiase, 370 Mass. 90, 94 - 95 (1976) (stating in *dicta* "we see no basis for distinguishing conservation purposes from other municipal purposes" when holding that G.L. c. 40B did not grant the zoning board and Housing Appeals Committee authority to override an eminent domain taking).[19]

[19] Furthermore, the access easement that is part of the Subject Property Rights that the Town seeks to take is arguably akin to an easement for a public way, which has long been recognized as a taking for a public purpose. See e.g., Luke, 337 Mass. at 308 - 310 (recognizing that taking easement for public way is a proper public use); Hyde v. Bos. & W. S. R. Co., 194 Mass. 80, 87 - 88 (1907) (recognizing that street or highway was proper public use); Denham v. Cty. Comm'rs of Bristol, 108 Mass. 202, 207 (1871) (recognizing that land taken for a "private way" that would be "open to the public and subject to public control" is a proper public purpose).

D. Overview Of Northeastern's Affirmative Defense Of Pretextual Bad Faith Taking

In support of its pretextual bad faith taking affirmative defense, Northeastern argues that the dominant reason the Town is taking the Subject Property Rights is to block its development plans, and not to preserve the East Point Easement Areas for open space and conservation purposes.

In support of their respective Motions, the parties point to various circumstances or factors in this action that the SJC considered in Pheasant Ridge when concluding that the town acted in bad faith. The Court will address each of the circumstances and factors raised by the parties.

E. Although The Town Has Not Conducted An Eminent Domain Taking In Decades, The Record Evidence Clearly Reflects That There Was Nothing Unusual About The Practices The Town Used To Do So Here

As stated, a factor that the SJC in Pheasant Ridge found buttressed the developer's claim that the town was engaging in a pretextual bad faith taking was that:

> The manner in which the town dealt with the attempted acquisition of the subject parcel was not in accord with its usual practices. The town agencies, such as the housing authority, recreation commission, conservation commission and planning board, that were responsible for town activities in the areas for which the land was to be taken were not consulted, as they normally would have been, either as to the merits or feasibility of the proposed use or the cost of any such use.

Pheasant Ridge, 399 Mass. at 778.

Here, although the Town has not conducted a taking in decades, the record clearly reflects, and Northeastern does not challenge, that there was nothing unusual regarding the manner in which the Town handled the taking procedure, including the accepting of gifts to fund the costs of the taking.

To be sure, the FinCom, the fiscal and managerial watchdog of the Town, and the CPC were closely and publicly involved, and the BoS formed a "Northeastern liaison committee" to assist it in connection with navigating ways to challenge the Project. See Kelly, 2007 Mass. App. LEXIS 1118, *2 (stating that "[t]here [wa]s no evidence that the town did not follow its usual practices in conducting the taking; rather, there [wa]s evidence that the town followed the statutory procedure to institute the taking.").[20]

F. The Town Showed Some Passing Interest In Preserving East Point For Open Space And Conservation Purposes Before Northeastern Publicly Announced Its Intention To Pursue The Project In January 2018

"Although not controlling, the absence of any prior town interest in the site or its neighborhood is instructive on the matter of good faith." Pheasant Ridge, 399 Mass. at 778. The Town argues that it had shown prior "interest in protecting and preserving East Point as open space and for conservation land for more than 60 years."

For its part, Northeastern argues that the Town showed no interest in taking the NU Property to preserve it for open space and conservation purposes. Northeastern further argues that, like the town in Pheasant Ridge, the Town's lack of prior preservation interest in the NU Property is shown by the fact that the Town engaged in no studies regarding the preservation of the land until well after Northeastern announced its development plans in early 2018. See e.g., Kelly, 2007 Mass. App. LEXIS 1118, *2 (ruling that "plaintiff failed to present any evidence, other than his bald assertions, that would support a conclusion that the town acted in bad faith" where, *inter*

[20] "'The taking of land from a private owner against his will for a public use under eminent domain is an exercise of one of the highest powers of government.'" Devine v. Town of Nantucket, 449 Mass. 499, 506 (2007) (citation omitted). Thus, the fact that the Town has not conducted a taking in decades and seeks to exercise one of its "highest powers" to do so here is arguably relevant to whether the Town is acting in bad faith.

alia, "[t]here [wa]s no evidence that the site was not suitable for a sewage pumping facility; instead, there [wa]s evidence that the town conducted a professional study of potential pumping facility sites and concluded that the plaintiff's property was best suited given all attendant circumstances.").

As to this factor, the Court must first address two preliminary issues of law raised by the parties in their submissions.

1. The Factor Is **Not** Whether The Town Previously Considered **Taking** The NU Property

First, there is no dispute that the Town never considered or discussed an eminent domain taking for any purpose of any portion of the NU Property, including the taking of conservation or access easements, before the February 2018 BoS meeting at which Northeastern publicly announced the Project.

However, contrary to Northeastern's argument, the relevant factor is not whether the Town had previously considered **taking** the NU Property by eminent domain, but rather whether it "has evinced **prior interest** in the area or its neighborhood." Elks, Lodge No. 65, 403 Mass. at 552 (emphasis added).

The second issue pertains to the Town's argument regarding the singular nature of this factor. The Town emphasizes that the factor is "the absence of **any** prior town interest in the site or its neighborhood," Pheasant Ridge, 399 Mass. at 778 (emphasis added), and argues that the record reflects that the Town had shown at least **some** prior interest in protecting and preserving East Point as open space and conservation land.

At first blush, the Town's view of the scope of this factor appears to have some support in the limited number of reported decisions that have addressed this factor after

Pheasant Ridge. For example, in HTA Ltd. P'ship, the Appeals Court reversed the Superior Court's dismissal, pursuant to Mass. R. Civ. P. 12(b)(6), of the plaintiffs' claim that "the [Massachusetts Turnpike A]uthority took the[ir] property in bad faith and for an improper private purpose, i.e., to provide private property with access to a public way." 51 Mass. App. Ct. at 451. When weighing the sufficiency of the facts alleged in the plaintiffs' complaint in support of their bad faith taking claim, the Appeals Court observed that, "[f]acts indicating a bad faith or an arbitrary or capricious taking **may include** facts indicating . . . that the site chosen had not been considered **at all** or not considered suitable for the stated purposes given for the taking." Id. at 456 (citations omitted) (emphasis added).

However, a close examination of the "prior interest" factor leads the Court to conclude that whether or not a municipality showed prior interest is not a binary question. Rather, the duration, continuity and level of a municipality's prior interest are what is relevant. For example, in Elks, Lodge No. 65, the SJC addressed the plaintiffs' argument that "the [trial court] judge was required to find a bad faith motivation for the [city of Lawrence's urban renewal riverfront] project because Emerson College was invited to relocate to the riverfront area before the area was officially designated as [a statutorily] blighted [area]." 403 Mass. at 552.

In rejecting this argument, the SJC in Elks, Lodge No. 65 observed that:

> The judge found that the city and various elected officials **expressed considerable interest** in the project area before they learned of Emerson College's plans to relocate. City officials had exercised **substantial efforts** to aid [the landowner], for example, in his attempts to develop the parcel; **interest** in constructing a riverfront park **started as early as 1983**; and **the 1970 plan designated a portion of the project land as an improvement area**. In light of this **continuous prior interest** in the riverfront area, the judge was not

> required to infer bad faith from the fact that political leaders discussed the site with Emerson College before the area was designated as blighted-open.

Id. (emphasis added); see also Deep v. City of N. Adams, 67 Mass. App. Ct. 1109, 2006 WL 2853878, *4 (2006) (unpublished decision) ("While [city's failure to follow customary practices and absence of prior interest] may indicate bad faith, the trial judge was not required to infer bad faith from them. [The plaintiff]'s reliance on *Pheasant Ridge* is misplaced. *Pheasant Ridge* does not hold . . . that an absence of prior interest and a failure to follow customary practices requires a finding of bad faith").

In sum, although the limited extent and duration of prior interest by the Town in preserving the NU Property for open space and conservation purposes is a factor to be weighed in determining whether the Town is acting in bad faith, it is "not controlling." Pheasant Ridge, 399 Mass. at 778.

The Town makes several arguments in support of its claim that the record reflects that it had shown at least some prior interest in preserving the East Point Easement Areas for open space and conservation purposes. The Court will address each argument.

2. The Town's Interest In Buying The NU Property From The Federal Government In 1963 Before Northeastern Did So Evinces Some Prior Interest By The Town In Preserving The NU Property For Open Space And Conservation Purpose

The Town first points to evidence that it applied to buy the NU Property from the federal government in 1964 before Northeastern applied to do so.

In 1963, after the military facilities were decommissioned and the federal government made the site available for sale, the Town applied to acquire the whole 28.7-acre site for "a park and recreational area." Ex. 22, p. 1039. The Town further

stated in its application that the "area would provide residents of the community with the essential open space needed for picnicking, softball, tennis, . . . other related activities . . . [and] a '[c]liff or [n]ature [w]alk.'" Ex. 22, p. 1040. Thus, in applying to acquire the entire East Point parcel from the federal government in 1963 (i.e., the entire 28.7-acre East Point property, not just the 20.4-acre parcel that the federal government ultimately transferred to Northeastern), the Town arguably evinced interest in preserving the East Point Easement Areas for open space and conservation purposes.

However, after the federal government initially offered the parcel to the Town, the Town's interest in seeking the preservation of the land quickly evaporated. First, the Town Meeting members voted not to authorize the appropriation of the money needed to buy the property at the 1964 ATM and the BoS subsequently notified the federal government that the Town had no further interest in the property.

Thereafter, on April 28, 1965, in response to "[r]ecent news stories in the Lynn Item [newspaper] indicat[ing] that Northeastern University [wa]s interested in acquiring the . . . site . . . for use as a marine biological laboratory," Ex. 25, p. 1049, the BoS wrote to the federal government and expressed its "oppos[ition to] the use of the property as an educational institution." Ex. 25, p. 1050. The BoS opposed Northeastern's acquisition of the property **because the Town would lose the chance to generate significant property taxes by the development of East Point into single family homes**, which could be built on the land under the then-zoning bylaw. Ex. 25, pp. 1049 – 1050 (emphasis added).

Then, on April 30, 1965, notwithstanding the BoS's opposition, the ConCom wrote the federal government in support of Northeastern's intent to acquire the site "for research and educational purposes." Ex. 27, p. 1065.

The ConCom further wrote that:

> Insofar as conservation aspects are concerned (namely, preservation of the unusual beauty of this striking bit of unspoiled cliff-lined coastline) we are of the opinion **that it is in the interest of the Town to have the property passed to an educational institution such as Northeastern University**, **particularly** if there were reserved to the townspeople the right to walk along a pathway on the coastal edge of the upland and **if some assurance is given that only low-lying or otherwise inconspicuous buildings are contemplated**.

Ex. 27, p. 1065 (emphasis added).

Thus, shortly after evincing interest in preserving the East Point property, the BoS wanted the federal government to sell the site for the development of many single family homes. Further, even the ConCom's discussion of the possible conservation aspects of the site was couched within its understanding that Northeastern would build on the land.

At bottom, when viewed in the light most favorable to the Town, the above record evidence demonstrates that the Town did evince some brief, passing interest in preserving the East Point Easement Areas for open space and conservation purposes. But, the Town's emphasis on the significance of this 60 year-old, short-lived interest is overstated.

3. The Town's Inclusion Of The NU Property In The NRZD Does Not Evince Prior Interest By The Town In Preserving The East Point Easement Areas For Open Space And Conservation Purposes

The Town next argues that its zoning activity in placing East Point in the NRZD shows its prior desire "to preserve and maintain the area's natural conditions, wildlife, and open space."

At the 1990 ATM, the Town Meeting members voted to revise the Town's Zoning By-Law by dividing the town into six classes of zoning districts, one of which was the newly created NRZD.

At the 1991 ATM, the Town Meeting members voted to change the zoning district of "East Point, including Canoe Beach, the Lodge Grant, the Lodge Park and land owned or controlled by Northeastern University," from residential to the NRZD. The NU Property has been in the NRZD since 1991.

According to the Nahant Zoning By-law, the purposes of the NRZD are as follows:[21]

> A. Purpose – The Natural Resource District is intended for natural resource and recreation uses in accordance with the following purposes:
>
> 1. The preservation and maintenance of protected wildlife and wetlands resource areas and habitats.
>
> 2. The protection of the Town against the costs which may be incurred when unsuitable development occurs in swamps, marshes, along water courses, in areas of high impact due to overcrowding of land and undue concentration of population, or on slopes subject to erosion.

[21] The parties failed to include the Nahant Zoning By-Law in the record and, instead, directed the Court to the Town's website to obtain same, which the Court has done.

> 3. To preserve and increase the amenities of the Town and foster enjoyment of its remaining natural resources as recreational values.
>
> 4. To conserve natural conditions, wildlife and open space for the education, passive and active recreation and general welfare of the public.

Nahant Zoning By-law, § 4.10A.[22]

Furthermore, according to the Nahant Zoning By-law (as amended in November 2019), the uses that may be made of land in the NRZD are as follows:[23]

> ***Nonprofit Religious or Educational Purposes***: Land or **structures** for religious purposes or **for educational purposes** on land owned or leased by the Commonwealth of Massachusetts or any of its agencies, subdivisions or bodies politic or by a religious sect or denomination, or **by a nonprofit educational corporation shall be permitted in any district** only to the extent required by M.G.L. c. 40A, § 3; provided, however, that such land or structures shall be subject to the regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, and building coverage requirements as described in Table 2 of Section 5 for each district and parking as described in Table 6-1.

Nahant Zoning By-law, § 2.02 (as amended in November 2019).[24]

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[22] https://nahant.org/wp-content/uploads/2023/01/ZONING-BYLAWS-w-changes-5-15-2021-ATM.docx (last accessed February 19, 2024). It appears that this section of the By-law has not been amended since at least 2012. See id. Nevertheless, viewing the evidence in the light most favorable to the Town (and because the Town has seemingly quoted this version), the Court will assume that this subsection has not been amended since it was passed by the voters at the 1990 ATM.

[23] The Town's citation to the **2023** Zoning By-Law regarding the prohibition on all development in the NRZD, which was passed at ATM in May 2021, is misplaced. The pertinent date is February 2018 when Northeastern publicly disclosed its intent to pursue the Project or, in the light most favorable to the Town, in March 2020, when the BoS formally declared its intention to pursue an eminent domain taking of the NU Property. Thus, the Court will refer to the Nahant Zoning By-Law, as amended in November 2019, which appears to be the last amendment thereto before March 2020. See https://nahant.org/wp-content/uploads/2023/01/ZONING-BYLAWS-w-changes-5-15-2021-ATM.docx (last accessed February 19, 2024). The Court recognizes that this may be a distinction without a difference.

[24] https://nahant.org/wp-content/uploads/2023/01/ZONING-BYLAWS-w-changes-5-15-2021-ATM.docx (last accessed February 19, 2024).

Hence, notwithstanding the stated purpose of a NRZD, i.e., *inter alia*, "[t]he preservation and maintenance of protected wildlife and wetlands resource areas and habitats," the Zoning By-law has always granted Northeastern the right to use the NU Property for educational purposes and to build structures thereon. Therefore, even when viewed in the light most favorable to the Town, the 1991 rezoning of the NU Property into the NRZD does not evince prior interest by the Town in preserving the East Point Easement Areas (or the NU Property, as a whole) for open space and conservation purposes.

4. The Town's 2008 Open Space Plan Evinces Some Interest By The Town In Preserving East Point And Surrounding Areas For Conservation Purposes; However, All Other Open Space Plans And Surveys Do Not Evince Such Interest

Next, the Town argues that its various open space plans are evidence of its prior interest in preserving the NU Property for open space and conservation purposes.

According to the Town, beginning in 1989, it "published Open Space plans extolling the value to the Town of conserving East Point's natural resources." Nevertheless, the 1989 Open Space Plan did not specifically reference, or even mention preserving or protecting any part of the NU Property (or any land on East Point, for that matter). See Ex. 1. Also, the NU Property was listed under "Recreation Land and Sites" and not under "Dedicated Conservation Lands" on the Open Space Inventory. Ex. 1, p. 0012.

In the Town's 2000 Open Space And Recreation Plan (as revised in April 2001), which was after the Town rezoned the NU Property from a residential district to the NRZD, the NU Property was listed in the "Inventory Of Lands Of Conservation And

Recreation Interest" as providing a "limited degree of protection," which was defined as "**[s]omewhat protected**, e.g., by zoning or conservation laws." Ex. 2, p. 0116 (emphasis added). To be sure, "Lodge Park/East Point" was likewise listed in the Inventory as providing the same "limited degree of protection" as the privately owned NU Property. Ex. 2, p. 0117.

Further, although the 2000 Plan stated that "[p]rivate owners **could be approached** to explore the **possibility** of agreeing to conservation restrictions and to discuss other methods to protect their land from future development," no mention of any effort to do so on East Point or the NU Property was made anywhere in the 100 pages of the plan. Ex. 2, p. 0076 (emphasis added).

In the Town's 2008 Open Space And Recreation Plan, like the 2000 Plan, the NU Property (and, separately, its Canoe Beach) was listed in the "Inventory Of Lands Of Conservation And Recreation Interest" as providing a "limited degree of protection," which was defined as "**[s]omewhat protected**, e.g., by zoning or conservation laws." Ex. 3, p. 0260 (emphasis added). Also, once again "Lodge Park/East Point" was listed in the Inventory as providing the same "limited degree of protection" as the privately owned NU Property. Ex. 3, p. 0261.

Like the 2000 Plan, the 2008 Plan discussed the potential of seeking "conservation restrictions[, which] would help to increase the protection for open space in Nahant and help with the problem of density . . . Of particular concern is the need for buffer areas for land that is already protected such as the **areas surrounding East Point** . . . ." Ex. 3, p. 0155 (emphasis added). The 2008 Plan also stated that "East Point is a vital resource, both as a natural habitat for wild plants and migrating birds and

as a passive recreational area for all the townspeople." Ex. 3, p. 0168. Thus, when viewed in the light most favorable to the Town, the 2008 Plan arguably evinces some interest by the Town in preserving East Point and surrounding areas for passive recreation and conservation purposes.

The Town's 2016 "Open Space & Recreation Master Plan" (the most recent plan at the time of Northeastern's announcement of the Project) was expressly envisioned as an analysis of "all . . . active and passive recreation resources throughout Nahant." Ex. 91(06), p. 2952. Nevertheless, the 2016 Plan does not even mention any part of the NU Property, other than Canoe Beach, as being an open space resource. Ex. 91(06), p. 2980. Also, as far as the Court can determine, the only other mention of the NU Property in the 2016 Plan was in the context of a discussion about Lodge Park, wherein it stated that "[t]he memorial park owned by the Town takes up the eastern half of East Point. The other portion is owned and maintained by Northeastern University[, which] is working on a self-guided tour program that includes the entire park." Ex. 91(06), p. 2991.

The Town also points to record evidence of the results of surveys of its citizens in 1989, 2000, and 2008 that showed that "East Point and Lodge Park" were very popular areas for recreation. However, the general popularity of these areas does not evince an interest by the Town in preserving the NU Property for open space and conservation purposes.

5. Contrary To The Town's Argument, The Very Existence Of Lodge Park On Adjoining Land, Accessed Only Through An Easement Over The NU Property, Is Not Evidence That The Town Evinced Prior Interest In Preserving The NU Property For Open Space And Conservation Purposes

The Town further agues, without citation to the record or any legal authority, that:

> The existence of Lodge Park alone on the adjoining land, accessed only through [the] NU Property, is sufficient for this Court to find prior public interest in East Point. Until NU began to police its property as a result of this dispute, Nahant residents knew of no boundaries in the open areas east of the Murphy Bunker and along its oceanfront. It was open space with public access to East Point's beaches and walking trails.

However, this argument is misplaced because the state of mind of Nahant residents (or, even Town officials), which is the product of misunderstanding the application of a legally cognizable, longstanding access easement over the NU Property, is irrelevant to a determination of whether the Town evinced prior interest in preserving the East Point Easement Areas (or the NU Property) for open space and conservation purposes.[25]

[25] In a similar vein, it could be argued that the Town had no reason to express interest over the years in taking the NU Property for open space and conservation purposes because of two arguments it advanced, and this Court rejected, in the aforementioned consolidated "public dedication" actions. First, that its officials and residents thought that Northeastern had dedicated the NU Property to public use (as an ecological preserve and for passive recreation). Second, that Northeastern purportedly made representations to the Town that it intended to permanently preserve the land area on top of and to the east of Murphy Bunker as an ecological preserve. In other words, an argument may be made that the Town had no reason to express any prior interest in preserving the NU Property for open space and conservation purposes because it (wrongly) thought Northeastern had dedicated the NU Property to public use as an ecological preserve and for passive recreation. Nevertheless, the Town does not advance this argument, likely because there is no record evidence to support it that this Court did not previously reject in the aforementioned public dedication consolidated actions.

6. In Sum, The Record Evidence Does Not Demonstrate Longstanding, Significant Prior Interest By The Town In Preserving The NU Property For Open Space And Conservation Purposes

In sum, when viewed in favor of the Town, some of the above evidence cited by the Town demonstrates that it had expressed prior interest in 1963 and 2008 in preserving East Point and surrounding areas for open space and conservation purposes.

However, this evidence does not evince the type of longstanding, comprehensive municipal interest that would summarily preclude a finding of bad faith. See e.g., Elks, Lodge No. 65, 403 Mass. at 552 (city "expressed considerable interest in the project area," "[c]ity officials had exercised substantial efforts to aid [the landowner]," and city had "continuous prior interest in the riverfront area"); DiBiase, 370 Mass. at 93 (stating that, although parties did not contest that taking was made in good faith, they could not reasonably do so because "the conservation commission had had the acquisition of the tract under consideration for more than ten years, and . . . the tract adjoins 100 acres of town forest.").

G. Although It Is Not Improper For The Town To Consider The Impact Of Infrastructure Costs That It May Incur From The Project, It Is Nevertheless Some Evidence Of The Town's True Motivation

Citing Pheasant Ridge, Northeastern argues, and the Town contests, that it is improper for the Town to use its taking power to prevent the Town from incurring infrastructure impacts and costs arising out of a development project.

Northeastern broadly points to statements made by Town officials and an outside study commissioned by the BoS that provided a financial analysis dated December 16,

2020, of costs that the Town would incur if the Project moves forward. That analysis concluded that the Project "will result in total additional costs to the Town of between $16.9 and $21.7 million over a 40-year period." Ex. 91(11), p. 3056.

Northeastern also points to the BoS's Second Statement to Nahant citizens about the proposed taking dated August 21, 2020. There, the BoS stated that "in the long run your tax burden will be less if East Point remains undeveloped via eminent domain." Ex. 71, p. 1936. "The facts are clear: It will cost you more on your taxes to host an expanded Northeastern than taking part of the property by eminent domain. . . . All of these financial assessments take no account for the incredible beauty of the special place period. . . . It will soon be developed unless you use your vote to prevent it." Ex. 71, p. 1937.

As to the issue of infrastructure costs, the SJC in Pheasant Lane stated that:

> To have taken the site involved in this case to prevent the impact of the proposed development on the water, sewer, traffic, and other problems of the town would not have been action in good faith. The town was not barring other residential development on these grounds. **There was another larger development for which a comprehensive permit was sought under G.L. c. 40B at about the same time, and the town did not try to take that property**. Problems with what is now called the "infrastructure" of the town might have warranted the denial of the comprehensive permit as reasonable and consistent with local needs (G.L. c. 40B, §§ 21, 23), but the taking (an indirect and unfairly selective attack on the problem) could not be justified on those grounds.

Pheasant Ridge, 399 Mass. at 777 – 778 (emphasis added).

This excerpt, which is the only instance where the SJC addressed the impact of infrastructure costs to the town in Pheasant Ridge, does not suggest that in all instances it is improper for a municipality to consider such an impact when taking by eminent domain. Instead, it reflects that, in Pheasant Ridge, the SJC considered

infrastructure costs a factor that suggested the town was acting in bad faith because it clearly demonstrated that the town's stated concern was belied by its actions regarding the other larger, ongoing c. 40B project.

Here, the record clearly reflects that, along with the fear that Northeastern's proposed new building would detract from the scenic and residential character of the town, the Town was immediately (and continually) concerned with incurring infrastructure costs that would not be offset by Northeastern, a non-profit educational institution that does not pay property taxes.

For example, Selectmen Lombard stated the following at the February 15, 2018, BoS meeting shortly after Northeastern presented its plans for the Project:

> [W]e need to take every step on the Board of [S]electman, legally, whatever it is the impact [sp.], because this town is way too small. Out of 351 cities and towns, we're the smallest. And we've got this major project going on, expansion, not only the traffic with 200 or 300 more students . . . and the money they're making, . . . it's a disgrace.

Ex. 96, p. 3202.

Immediately after this statement by Lombard, Chesley Taylor, a member of the BoS, stated that, "I have grave concerns with infrastructure ... I'm really worried about the infrastructure." Id. at p. 3203.

In sum, standing alone, the Project's impact on the Town's infrastructure is not, itself, an improper consideration. However, when the genesis of the Town's concern for the impact on infrastructure, i.e., the additional people coming to the town as a result of the new building, is coupled with the Town's fear that the Project would detract from the town's scenic and residential nature, it is certainly evidence of the Town's true motivation in wanting to stop the Project by all means.

H. When Viewed In Favor Of The Town, The Record Evidence Shows That The Town's Dominant, If Not Sole, Reason For Taking The Subject Property Rights Is To Stop The Project Because, *Inter Alia*, It Would Detract From The Scenic, Residential Nature Of The Town

Northeastern argues that the Town's motivation (i.e., its dominant reason) for the taking is identical to the town's motivation in Pheasant Ridge that the SJC concluded was unlawful in that case: stopping development that the landowner has a statutory right to pursue, under the Dover Amendment in the case of Northeastern and under c. 40B in the case of the landowner in Pheasant Ridge.[26, 27] The Court agrees.

The undisputed record evidence here clearly shows that the Town's dominant reason for the taking is to block Northeastern from pursuing the Project (or any development plans) because the size of the proposed new building is, according to the BoS, "not a fit for [the] scenic residential community," Ex. 54, p. 1332, and would increase traffic and infrastructure costs.[28]

This is reflected in myriad, repeated, undisputed public statements made by BoS members, including at the public meeting on February 15, 2018, when Northeastern first presented the plans for the Project to the public.

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[26] "The Dover Amendment, G.L. c. 40A, § 3, second par., exempts from certain local zoning laws land or structures that are to be used by nonprofit educational institutions for 'educational purposes.'" Regis Coll. v. Town of Weston, 462 Mass. 280, 281 (2012).

[27] Northeastern also points out that, as previously stated, the Town's zoning bylaw expressly allows nonprofit educational uses in the NRZD, like that being conducted at the MSC by Northeastern.

[28] The Town's concern that buildings on the NU Property would detract from the scenic, residential nature of the town is longstanding. As far back as April 1965 when Northeastern applied to obtain the property from the federal government, the ConCom supported Northeastern's application, especially if "some assurance is given [by Northeastern] that only low-lying or otherwise inconspicuous buildings are contemplated." Ex. 27, p. 1065.

In fact, immediately after Northeastern concluded its presentation of the Project at the February 15, 2018, BoS meeting, the Chair of the BoS, Francis Enzo Barile ("Barile"), stated:

> Okay. Thank You. Gentlemen, I've listened to the -- the folks in town, and I firmly believe that this is not a good – **it's not a good thing for the town**. So I'm going to entertain **a motion**, because this has really literally been driven into the town since December 21st that when -- when and if Northeastern submits a permit application that the Town's Board of Selectman will consider **petitioning the Land Court for an injunction to stop** any permit [sp.] issues. So moved.

Ex. 96, p. 3201 (emphasis added).

In response to Chair Barile's motion at the February 15, 2018, BoS meeting, Selectman Richard Lombard ("Lombard") stated that the Town should "simply say no to Northeastern . . . well, very simply, Mr. Northeastern, this construction, this expansion should stop now . . . **we need to take every step legally on the [BoS to stop the Project] because this town is way too small**." Id. at pp. 3201 – 3202 (emphasis added).[29] Then, Selectman Taylor stated the following:

> **This is a nice, quiet town**. My neighbors and I talk all winter about rolling up the sidewalks. We don't see each other. **That's what this town is all about**. I've been here forever . . . **I'm 100% against this**, 100% against it. And I believe . . . this is the beginning . . . of probably a long legal battle, but I say we do the battle.

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[29] Members of the BoS were not the only speakers at the meeting who expressed concern that the Project would detract from the town's character. For example, Joshua Antrim, who later became a member of the BoS, stated the following, in pertinent part:

> This is about building a building **that's way out of scale with the town**, way out of scale with the place. **It just doesn't belong there**. I think all of us that have been up to Lodge Park know what a beautiful place that is . . . And when I look out across the ocean and see the sun shining off the ocean, **I don't want to** turn around and **see the sun shining off a 60,000 square foot building**.

Ex. 96, p. 3207 (emphasis added).

Id. at p. 3203 (emphasis added).

In conclusion, Lombard stated, "[w]e do not want the extension or expansion of Northeastern." Id. at p. 3202. Later during the meeting, Barile stated, "quite frankly, they shouldn't be building up there. **They've got enough**. End of story." Id. at p. 3205 (emphasis added). The members of the Board then unanimously approved Barile's motion (to consider seeking an injunction to stop the Project) and Lombard added, "[w]e want to win, and we want to leave East Point as it is." Id. at p. 3206.

In the weeks following the February 15, 2018, BoS meeting, the members of the BoS repeatedly and publicly expressed opposition to the Project for reasons other than preservation of open space and conservation.

On March 26, 2018, the BoS met privately in executive session with Town Counsel and outside attorneys. Ex. 91(22), p. 3122. Jeffrey Musman ("Musman"), an officer of the NPT, attended this meeting. He suggested that the NU Property should be taken by eminent domain. Id. The meeting included discussions about strategies to forever stop the Project by taking the NU Property by eminent domain. This was the first time the Town ever discussed an eminent domain taking of any property interests in the NU Property.

At the BoS meeting on April 5, 2018, Lombard stated that "the Board of Selectmen are totally opposed to the expansion program at Northeastern, we cannot allow them to expand that program." Ex. 92, p. 3160.

On April 6, 2018, the BoS wrote to Northeastern's President and Board of Trustees. This letter stated the following, in its entirety:

> The Nahant Massachusetts Board of Selectman are writing to you as President and the Trustees of Northeastern University, regarding a matter that is a serious concern to both the Board and the citizens of our community. Specifically, we wish to vigorously oppose **any expansion** at your Nahant campus.
>
> The Town of Nahant is a small seacoast peninsula, with a population of approximately 3,500, and has a geographic footprint of one square mile. Nahant is the smallest town in the Commonwealth of Massachusetts, **with unique challenges due to finances, severe storm damage, and aging infrastructure**.
>
> At our March 5, 2018, Board of Selectman meeting, the three members unanimously voted our opposition to **any expansion** of Northeastern University's Marine Science Center, and to write you about this issue. Nahant has enjoyed a good working relationship with Northeastern for approximately 50 years, however this relationship has deteriorated over the past two years. We believe our relationship may completely dissolve due to the contemplated expansion at the Marine Science Center. With little advanced knowledge, Northeastern has informed our community regarding this expansion, which in our opinion was poorly rolled out.
>
> **The proposed 60,000 sq. ft. building, with its roadways and lighting is not a fit for our scenic residential community**. The construction has the potential to eliminate bird and wildlife habitats. **A new entrance into the Marine Science Center will alter traffic flow. A proposed parking lot will increase traffic from cars, delivery trucks, and shuttles, thus putting more strain on our infrastructure**. Also, your proposed **project jeopardizes the fiduciary position of Nahant**, and may be detrimental to public safety, public health, **and cause the inability to provide necessary services that the residents of this community deserves**.
>
> For more than 30 years, Northeastern has pumped seawater through the Marine Science Center. We believe there should be a study to determine the impact that the seawater system has had on the local ecology. The seawater project needs to be properly reviewed and the citizens need to be informed of any impact proposed.
>
> In closing, we the members of the Nahant Board of Selectman, strongly request you **halt all expansion** at your Marine Science

> Center, and study the proper impact of any seawater pumping system which impacts both the land and the sea of our Town.

Ex. 54, pp. 1332 – 1333 (emphasis added).[30]

This letter is the BoS's very first written expression about the Project, sent a mere few weeks after Northeastern's public presentation of the plans for the Project on February 15, 2018. It plainly lays bare the Town's true motivation in wanting to stop the Project at all costs: "the proposed [expanded] building, with its roadways and lighting is not a fit for **our scenic residential community**," i.e., the new building would not be aesthetically pleasing to the town's citizens.

At the April 12, 2018, BoS meeting, the BoS Chair, Barile, stated that "we are going to stop them." Id. Members of the BoS also expressed concern about the increased number of people who would be working on the property, the increased costs to the Town, and the increased traffic.

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[30] To be sure, even the open letter to Northeastern by the Board of Keep Nahant Wild, a grassroots organization affiliated with the NPT that was vociferously opposed to the Project, dated April 9, 2018, barely mentions concerns about preserving the NU Property for conservation and open space purposes. For example, that letter stated:

> No issue in Nahant history has raised such a unified response from citizenry and elected officials. This **proposed expansion would create a significant impact on our residential community**. This will also **pose burdens on the existing infrastructure of the town** that Northeastern University has not considered in developing their plans for this interdisciplinary educational facility. The citizens who have signed this Open Letter are not against education or science, and do want to see the Marine Science Center continue in a manner that is both [sp.] environmentally conducive to the conservation land on which it operates.

Ex. 54, p. 1330 (emphasis added).

In early April 2018, the BoS began considering establishing a "Northeastern liaison committee" to assist the BoS in connection with the Project. When a Town official, Gerry Perry ("Perry"), was conceptualizing the possible actions and responsibilities that the Northeastern liaison committee would explore when formed, he made no mention of an eminent domain taking as a possible action to explore. See Ex. 91(18), pp. 3112 – 3113. Rather, Perry stated that the committee should, *inter alia*, consider "recommend[ing] appropriate legal action necessary **to protect the quality of life for Nahant residents.**" Id. at p. 3112 (emphasis added).

In approximately May 2018, the BoS formed the Northeastern liaison committee and appointed Musman, an officer of the NPT, as a member. The committee met with an attorney specializing in eminent domain. They discussed that obtaining eminent domain authorization from the Town Meeting would give the Town leverage in its negotiations with Northeastern to alter or stop the Project.[31, 32]

At the October 4, 2018, BoS meeting Lombard stated that the Town "[could] not afford to buy back the land from NU." Ex. 91(19), p. 3114. He further stated that there was "a group in town who have offered to underwrite the complete package concerning taking over [the NU Property] by eminent domain." Id.

In fact, based on statements made by Nahant residents and members of the BoS beginning at the very first public meeting during which a possible taking was discussed, Barile, the then-chairperson of the BoS, formed the opinion that the taking was being

[31] The attorney's fees were covered by a gift of $67,500 made by the NPT to the Town, which the BoS formally accepted on May 17, 2018. Ex. 91(20).

[32] The committee was evidently disbanded by the BoS sometime before February 8, 2019. See Ex. 31, p. 3151 (letter from the NPT to the Town Administrator).

pursued "just to stop Northeastern."[33] Ex. 86, p. 2573. Further, the members of the NPT were "adamant . . . [t]hat they wanted it stopped." Ex. 86, p. 2573.

On December 11, 2018, after meeting with citizens and revising the Project, Northeastern presented three new design proposals at a public meeting of the BoS attended by approximately 200 citizens, including members of the NPT. See Ex. 55, pp. 1465 – 1470. One of the proposals "reduce[d] the east side of the building by almost 50%." Id. at 1465. Among numerous audience members that spoke after the presentation was a member of the NPT/Keep Nahant Wild organization, who stated that the issue was not opposition to science, research, education or the MSC. Rather, the issue was the "unwarranted and overly aggressive expansion" plans being proposed. He claimed that "**this is about preserving the core being of this Town**." Id. at pp. 1466 – 1467 (emphasis added).

In fact, only one of the 24 citizens who spoke after Northeastern's presentation during the December 2018 BoS meeting expressed concern that the Project could negatively impact conservation of the NU Property. See Ex 55, p. 1468 ("She just can't get over that [Northeastern] thinks it makes sense to take 'green space' when it is so critical."). The concerns of every other citizen who spoke related to: (a) the impact of additional vehicular traffic, sewer costs, additional crime, and that the costs would be borne solely by the Town because Northeastern does not pay property taxes; (b) the large size of the proposed building would be out of proportion in such a small town; (c) a request that Northeastern "waive the Dover Amendment" and be subject to all the

[33] Neither party has identified the date of the first **public** BoS meeting during which a possible eminent domain taking of the NU Property was first discussed and the record is unclear on the subject. However, as stated above, the subject was discussed by the BoS as a possibility at the October 4, 2018, BoS meeting.

zoning bylaws to show its good faith; and, (d) many comments regarding Northeastern's purported hubris in believing it could go forward with the Project without the Town and its citizens getting on board. See id. at pp. 1466 - 1470.

On January 17, 2019, the Town Administrator and outside counsel met with three representatives of the NPT: Musman, Mark Cullinan (who later became a member of the BoS), and David Lurie. Ex. 31, p. 3147. At the meeting, they discussed "whether NPT was prepared to cover the costs of any ... eminent domain taking at East Point" (it was) and "what form of expansion of the [MSC] by Northeastern [], if any, **would [the] NPT be willing to accept**." Id. (emphasis added). Thus, the Town was prepared to defer to the NPT, a private organization whose members were primarily landowners and residents of the town that offered to fund the costs of the taking, regarding whether a taking should be pursued.

As of July 23, 2020, Selectman Joshua Antrim ("Antrim") believed that an "eminent domain [taking] provided a tool to prevent development or to negotiate an acceptable resolution with Northeastern." In fact, it was his "hope" that eminent domain gave the BoS the ability to stop the Project. Ex. 88, p. 2779.

On September 29, 2020, the BoS issued a press release announcing the Town's rejection of an offer by Northeastern to settle the dispute over the Project. The letter stated, in part, that "Northeastern's conditions do not adequately address the issue central to any proposed expansion, which is the preservation of the wildlife area on top of, and to the east of, the Murphy Battery." Ex. 72, p. 1961.

On April 1, 2021, the BoS met privately in executive session to discuss the writing of the eminent domain ATM warrant articles, "the amount of property to be taken, and the type of taking." Ex. 91(30), p. 3145. Musman was present as a representative of the NPT. Id. They also discussed the need for "the [ConCom] to request the [BoS] to take for conservation purposes **should that be the purpose of the taking**." Id. Thus, even at this late hour, the Town apparently had not determined the purpose of the taking.

At the BoS meeting on April 29, 2021, Selectman Antrim made the following statement: "Now the question becomes a simple one. Do you want that land developed or not? It's a binary question. It's yes or no. There's no half-buildings, no part-time buildings. It's do you want the building, yes or no? **We can't stop them, but with eminent domain, we can, and we'll have the leverage to negotiate a more acceptable solution**." Ex. 92, p. 3161 (emphasis added).

In fact, the record reflects that the Town only decided to pursue the taking when it felt that it had exhausted its efforts to negotiate with Northeastern to select another site for the Project. The BoS was concerned that nothing within the ordinary zoning process would stop Northeastern from constructing its building. It responded to that concern by expressly advancing a plan to take the property in March 2020 and then, after postponement of the 2020 ATM, placing an article on the Town Meeting warrant to authorize an eminent domain taking in 2021. The BoS viewed a taking as a means, along with its failed public dedication and promissory estoppel claims, of preventing Northeastern from constructing the new building planned for the Project.

Further evidence that the dominant reason for the taking is to stop the Project because, *inter alia*, it would detract from the "scenic, residential nature" of the Town is the undisputed record evidence that almost all, if not all, of the funding of the costs associated with the taking, including legal fees, is being borne by Town residents (via the NPT), residents who have repeatedly publicly expressed their concern that the impact of the Project will detract from the scenic and residential character of the Town.

I. Conclusion

The Court recognizes that:

> It is not easy to prove that particular municipal action was taken in bad faith. This is particularly true where the significant event is an affirmative vote (here [70%]) of the persons voting at a town meeting on a motion to take a particular parcel of land. [A court] should not easily attribute improper motives to a town, and to its citizens voting at town meeting, if there were valid reasons that would have supported the town's action.

Pheasant Ridge, 399 Mass. at 776 – 777. Nevertheless, here, even when viewed in the Town's favor, the record evidence clearly shows that the Town's dominant reason for the taking is not to preserve the East Point Easement Areas for open space and conservation purposes, but rather to stop a development project that Northeastern has the right to pursue (with proper permitting, permissions, etc.).

In sum, like in Pheasant Ridge:

> The record requires the inference that the town, acting through its town meeting, was concerned only with blocking [Northeastern's] development. [This Court] see[s] no dispute as to any material fact barring an award of summary judgment on this point. **The public purposes for which the site purportedly was to be taken were not purposes for which the [T]own intended in good faith to take and use the [Subject P]roperty**.

Id. at 779 (emphasis added).

Therefore, the Court rules as a matter of law that Northeastern has proven its pretextual bad faith taking affirmative defense and has, accordingly, impugned the validity of the taking under G.L. c. 80A, § 7.

Accordingly, so much of NU's Motion that seeks entry of summary judgment on its behalf on its affirmative defense of pretextual bad faith taking is **ALLOWED** and so much of the Town's Motion that seeks entry of summary judgment on its behalf on Northeastern's affirmative defense of pretextual bad faith taking is **DENIED**, and the Town's Petition To Take Property (Paper No. 1) must be dismissed pursuant to G.L. c. 80A, § 7.[34]

ORDER

For the above reasons, it is **HEREBY ORDERED** that:

1. The Town Of Nahant's Motion For Summary Judgment Regarding Northeastern University's Challenge To The Validity Of The Town's Order Of Intention To Take By Eminent Domain Pursuant To G.L. c. 80A (Paper No. 38) is **DENIED** as to Northeastern's affirmative defense of a pretextual bad faith taking (and the Court does not reach the issue of Northeastern's affirmative defense of a private benefit bad faith taking).

2. The Respondent's Motion For Summary Judgment On Plaintiff's Claims (Paper No. 39) is **ALLOWED** as to Northeastern's affirmative defense of a pretextual bad faith taking (and the Court does not reach the issue of Northeastern's affirmative defense of a private benefit bad faith taking).

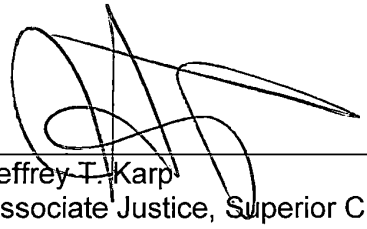
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[34] Given the Court's determination that the Town has engaged in a pretextual bad faith taking, the Court declines to address the merits of Northeastern's other theory, that the taking is being pursued to benefit private actors who have improperly controlled the Town's eminent domain taking authority, other than to note that the Court agrees with arguments advanced by both parties. For example, there is some merit to the Town's argument that the record evidence reflects that any private benefit conferred by the taking will be incidental. Further, as stated above, there is merit to Northeastern's argument that wealthy donors, through agents of the NPT, have "commandeered" the Town's eminent domain taking authority. The Court also declines to address Northeastern's assertion of the affirmative defense of judicial estoppel.

3. The Court hereby **DECLARES** and **ADJUDGES** that the Order Of Intention To Take Conservation Easement By Eminent Domain issued by the Board of Selectmen of the Town of Nahant on September 8, 2021, that is at issue in the Town of Nahant's Petition To Take Property (Paper No. 1) and that was filed in the Southern Essex Registry District of the Land Court at Document 629107 on September 10, 2021, is null and void because the Town of Nahant is pursuing the taking described therein in bad faith for an improper reason.

4. The Town's Petition To Take Property (Paper No. 1) is **HEREBY DISMISSED** and **JUDGMENT SHALL ENTER** at the appropriate time.

5. If Northeastern University seeks an award of costs and/or believes it is entitled to "indemnity for loss and damages" and an award of reasonable attorney's fees from the Town of Nahant under G.L. c. 80A, § 13, then it shall serve a motion for same on the Town of Nahant with supporting documentation, pursuant to Superior Court Rule 9A, within 30 days hereof.[35]



Jeffrey T. Karp
Associate Justice, Superior Court
Dated: April 16, 2024

[35] The Court expresses no view on whether Northeastern is entitled to an award of "indemnity for loss and damages," and an award of reasonable attorney's fees under § 13, or elsewhere in c. 80A.

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COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

SUPERIOR COURT
CIVIL ACTION
No. 2177CV00936

TOWN OF NAHANT

vs.

12.5 ACRES OF LAND+/-
SITUATED IN NAHANT, MASSACHUSETTS,

and

NORTHEASTERN UNIVERSITY

ORDER AND RULINGS OF LAW FRAMED BY THE COURT REGARDING NORTHEASTERN UNIVERSITY'S MOTION FOR COSTS AND INDEMNITY

This is an action brought by the Town of Nahant ("Town") under G.L. c. 80A, § 1, *et. seq.*, to take by eminent domain certain conservation and access easements in a large area of mostly undeveloped land and a beach owned by Northeastern University ("NU").

On April 16, 2024, this Court granted NU's motion for summary judgment as to its pretextual bad faith taking affirmative defense and ordered the dismissal of the Town's Petition To Take Property (Paper No. 1) ("Petition") pursuant to G.L. c. 80A, § 7. See Memorandum Of Decision at Paper No. 41.

Having obtained dismissal of the Petition, NU is entitled under G.L. c. 80A, § 13, to indemnity from the Town for its loss and damages, and an award of costs. The parties dispute the meaning of certain terms in the statute and, hence, the scope of the "loss and damages" which NU is entitled to recover. This dispute arose in the context of

NU serving upon the Town pursuant to Superior Court Rule 9A, a motion for an award of costs and indemnity under G.L. c. 80A, § 13 ("Motion For Indemnity").[1]

In response to the dispute regarding the scope of the indemnity award to which NU is entitled under § 13, the Court issued a procedural order framing issues of law that should be decided before addressing the merits of the items and amounts requested by NU in the Motion For Indemnity. See Procedural Order Framing Issues To Be Decided On Summary Judgment Regarding Northeastern University's Motion For Costs And Indemnity (Paper No. 54).

Now before the Court are the parties' requests for rulings and memoranda in support,[2] which require the Court to interpret certain statutory language and make rulings of law thereon, which the Court does herein.

DISCUSSION

In the Motion For Indemnity, NU asserts that it is entitled to recover the following categories of costs, expenses, and damages under § 13: the costs authorized by G.L. c. 261, § 1, including the cost of deposition transcripts and document production, expert fees, attorneys' fees, and "delay damages" (i.e., the increase in NU's building costs).

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[1] Although the Motion For Indemnity has been served under Rule 9A, neither the motion nor the Town's opposition have been filed because the Court stayed further action on the motion until resolution of the issues of law addressed herein.

[2] The memoranda before the Court are the following: Respondent's Request For Ruling Of Law Regarding Its Entitlement To Costs And Indemnity Pursuant To G.L. c. 80A, §§ 11 And 13 (Paper No. 55); Town Of Nahant's Memorandum Of Law Pursuant To Court Procedural Order (Paper No. 55.1); Respondent Northeastern University's Reply To Town Of Nahant's Memorandum Of Law Pursuant To Court Procedural Order (Paper No. 55.2); and, Nahant's Sur-Reply To Northeastern's Reply Pursuant To Court Procedural Order (Paper No. 55.3).

I. LEGAL FRAMEWORK

A. The Statutory Framework At Issue

Generally speaking, most eminent domain takings in Massachusetts are conducted pursuant to G.L. c. 79, which, *inter alia*, sets forth the procedures a municipality must follow. On the other hand, G.L. c. 80A, an eminent domain statute that is not commonly invoked, "authorizes eminent domain proceedings quite unlike those under G.L. c. 79." Swampscott v. Remis, 350 Mass. 523, 525 - 526 (1966) (setting forth the specific procedure a town must follow under G.L. c. 80A).[3]

One condition for a taking under c. 80A is a requirement that the municipality file "a petition instituting a proceeding in rem . . . in the Superior Court." Id. at 525 (citing G.L. c. 80A, § 4).

As is pertinent here, c. 80A authorizes the landowner to contest the taking in the Superior Court action by "impugn[ing] the validity or regularity of the proceedings." G.L. c. 80A, §§ 5(3) and 7.

Here, NU "impugned" the validity of the taking by alleging that the Town pursued the taking in bad faith for an improper reason, i.e., to stop NU's proposed development plans. This Court agreed, granted NU summary judgment on its affirmative defense of a pretextual bad faith taking, voided the Town's attempt to take certain conservation and access easements in NU's land, and dismissed the Petition under G.L. c. 80A, § 7. See Memorandum Of Decision at Paper No. 41.

[3] The case of Swampscott v. Remis is the only reported decision that has addressed a taking under G.L. c. 80A, and that decision did not address the interpretation of the specific statutory language that is presently before the Court.

As is pertinent here, "[i]f the petition is dismissed under [§ 7], **costs, as in actions at law**, **shall be awarded** to the respondents, in addition to **indemnity for loss and damages as provided in [§ 11]**." G.L. c. 80A, § 13 (emphasis added).

For its part, § 11 states, in relevant part:

> [I]n case the petition shall be dismissed on motion of a party respondent . . . , **any person** who has **suffered damage or loss or been put to expense by the proceedings** shall be entitled to recover **indemnity in full** by order of the court and for which execution shall issue.

G.L. c. 80A, § 11 (emphasis added).

B. General Rules Of Statutory Interpretation

The well-known, general rules of statutory interpretation are as follows:

> "In interpreting the meaning of a statute, [courts] look first to the plain statutory language." . . . "[Courts] look not only to the specific words at issue but also to other sections [of the statute], and 'construe them together ... so as to constitute an harmonious whole consistent with the legislative purpose.'" . . . "Where the language of a statute is clear and unambiguous, it is conclusive as to legislative intent ... and the courts enforce the statute according to its plain wording ... so long as its application would not lead to an absurd result." . . . Where there is doubt or ambiguity about the meaning of a statutory provision, the court may turn to extrinsic sources to determine legislative purpose and intent.

Cavanagh v. Cavanagh, 490 Mass. 398, 405 (2022) (citations omitted).

These general rules of statutory interpretation are codified at G.L. c. 4, § 6. Nevertheless, "as § 6 makes clear, all rules of statutory construction serve the overarching principle that [courts] 'construe statutory language to effectuate legislative intent.'" Id. (citation omitted).

With this legal framework in mind, the Court will address whether § 13 authorizes NU to recover the aforementioned specific costs, expenses, and damages it seeks in the Motion For Indemnity.

II. NU IS ENTITLED TO RECOVER REASONABLE EXPERT AND ATTORNEYS' FEES, BUT NOT DELAY DAMAGES

A. NU Is Entitled To An Award Of Indemnity For Loss And Damages, And For Having "Been Put To Expense By The Proceedings"

The first question that Court must address is, where § 13 states that NU is entitled to be awarded "indemnity for loss and damages as provided in [§ 11]," whether NU is also entitled to an award for having "been put to expense by the proceedings" under § 11. The Court answers this question in the affirmative.

An argument can be made that the Court must assume that in including the right to indemnity for "loss and damages," and not including the right to indemnity for having "been put to expense," the Legislature did not intend that a landowner such as NU would be entitled to recover for having "been put to expense." See Hartford Ins. Co. v. Hertz Corp., 410 Mass. 279, 283 (1991) ("As a general rule, when the Legislature has employed specific language in one part of a statute, but not in another part which deals with the same topic, the earlier language should not be implied where it is not present."). However, as stated above, when interpreting a statute, "'[courts] look not only to the specific words at issue but also to other sections, and construe them together ... so as to constitute an harmonious whole consistent with the legislative purpose.'" Cavanagh, 490 Mass. at 405 (quotations and citation omitted).

Section 13 addresses the right to indemnity after dismissal of the petition to take where a landowner has successfully "impugn[ed] the validity or regularity of the proceedings," under § 7, while § 11 addresses the right to indemnity after the municipality "abandon[s] the proposed improvement and discontinue[s] the proceedings." G.L. c. 80A, § 11. Nevertheless, § 13 specifically incorporates by reference certain indemnity relief provided under § 11.

It would be completely illogical to believe that the Legislature intended to grant a landowner who has successfully challenged the legality of the proposed taking less indemnity than a landowner who is the beneficiary of a municipality changing its decision to seek a taking. "'A fundamental tenet of statutory interpretation is that statutory language should be given effect consistent with its plain meaning and in light of the aim of the Legislature unless to do so would achieve an illogical result.'" Marengi v. 6 Forest Rd. LLC, 491 Mass. 19, 24 - 25 (2022) (citations omitted).

Therefore, the Court rules that, under G.L. c. 80A, § 13, NU is entitled to indemnity in full for loss and damages, and for having "been put to expense by the proceedings." See G.L. c. 80A, § 11.

B. The Meaning Of The Phrase "Indemnity In Full"

The next question the Court must address is the meaning of the phrase "indemnity in full." The Court has found neither that phrase nor the phrase "full indemnity" used elsewhere in our current General Laws. However, the phrase "full indemnity" was used in Gen. Sts. c. 43, § 14, and an examination of how that phrase was interpreted by the SJC prior to the passage of c. 80A in 1929 is instructive.

The former c. 43 pertained to county and municipal proceedings for the laying out of roadways over private land. See Main v. Plymouth Cty., 223 Mass. 66, 66 - 67 (1916). Generally speaking, Gen. Sts. c. 43, § 14, which was in effect from 1842 until at least 1916, granted the landowner "full indemnity" from the municipality for damages they sustained when, after conducting municipal proceedings, the laying out of the roadway was voided or abandoned. Id. More specifically, as of at least 1916, Gen. Sts. c. 43, § 14, stated the following, as pertinent here:

> "[W]hen a person so claiming damages has been **put to [loss] and expense by the [municipal] proceedings**, the [municipality] shall allow him **full indemnity** therefor . . . ."

Id. at 69 (emphasis added).

In Whitney v. Lynn, 122 Mass. 338 (1877), the city of Lynn commenced proceedings to lay out a roadway over the plaintiff's land, but eventually abandoned the effort. Thereafter, the plaintiff filed an action in Superior Court seeking damages from Lynn under Gen. Sts. c. 43, § 14.

On appeal, the SJC in Whitney found that "[t]he laying out was . . . void, as against the owner of the land, and [under Gen. Sts. c. 43, § 14], on application to the city authorities of Lynn, [he] was entitled to indemnity for damages sustained by reason of the proceedings." Id. at 342. As is pertinent here, in interpretating the scope of Gen. Sts. c. 43, § 14, which contains much of the same applicable language as in G.L. c. 80A, § 11,[4] the SJC held that "[t]he [plaintiff]'s [loss] and expense in visiting Lynn, **employing counsel and conferring with the mayor**, come clearly within the statute." Id. at 343 (emphasis added).

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[4] At the time Whitney was decided, "[t]he statute provide[d] that any person claiming damages shall have full indemnity for the **trouble** and expense to which he has been put by the

C. NU Is Entitled To Recover Reasonable Expert And Attorneys' Fees That It Incurred During The c. 80A Proceedings

Based on "the common and approved usage of the [words 'damage,' 'loss,' and 'expense']," G.L. c. 4, § 6, third, and the aforementioned holding in Whitney, the Court has little difficulty ruling that NU is entitled to recover reasonable expert and attorneys' fees that it incurred during the c. 80A proceedings (i.e., "by the proceedings"), which necessarily began when the Town Meeting members approved the taking on May 15, 2021. See G.L. c. 80A, § 2 ("The board [as defined in § 1], having first complied with all the preliminary requirements prescribed by law, shall adopt an order of intention to take . . . ."); see also Memorandum Of Decision, pp. 4 – 5, 11, at Paper No. 41 (discussing governance of the Town, the calling of Town meetings, etc.).[5]

D. NU Is Not Entitled To Recover Delay Damages

As for NU's request for indemnity for delay damages, the Court rules that § 13 does not authorize the recovery for such damages in this case substantially for the reasons argued by the Town in their Memorandum of Law (Paper No. 55.1) at §§ III(A)(1) and III(C).[6]

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proceedings." Id. at 343 (emphasis added). The legislature later amended the statute, "substitut[ing] the word 'loss' for 'trouble.'" Main, 223 Mass. at 69. This substitution was a "mere verbal change[] in the revision of a statute[, which did] not alter its meaning and [is] construed as a continuation of the previous law." Id. (citations omitted).

[5] The Town and NU do not dispute that NU is entitled to recover the costs of deposition transcripts and the scanning of documents for document production. Thus, the Court declines to rule on the meaning of the phrase "costs, as in actions at law."

[6] In its brief, the Town suggests that NU may be entitled to damages for a "temporary taking" for the period of time it was unable to exercise its full ownership rights in the property due to the c. 80A proceedings. The Court is not convinced that such damages are permitted absent an adjudicated taking. In fact, the holding in Swampscott v. Remis arguably bars such damages in this case. There, the SJC held that c. 80A is constitutional despite its "failure" to provide compensation for the landowner's inability to sell or improve his land during the c. 80A

III. THE PARTIES ARE NOT ENTITLED TO AN EVIDENTIARY HEARING OR A JURY TRIAL REGARDING THE AWARD OF DAMAGES UNDER § 13

Finally, the Court rules that, while the parties are entitled to a hearing regarding the awarding of expert and attorneys' fees under § 13, they are not entitled to an evidentiary hearing or a determination by a jury.

Where the legislature specifically granted the right to a jury determination in another provision of c. 80A, see G.L. c. 80A, § 9 (granting right to jury when contesting valuation of taking determined by "commissioners" appointed by court under § 8), the Court will not read in such a right under §§ 11 and 13. See Trust Ins. Co. v. Bruce at Park Chiropractic Clinic, 430 Mass. 607, 608 n.3 (2000) (stating that "[t]here is no right to a jury trial for attorney's fees" awarded pursuant to a statute because attorneys' fees "allowable by statute ... 'are more analogous to costs' than to damages"); Borne v. Haverhill Golf & Country Club, Inc., 58 Mass. App. Ct. 306, 325 (2003) (ruling that "there is no requirement for an evidentiary hearing" regarding the awarding of attorneys' fees).

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proceedings. Remis, 350 Mass. at 527 – 529. In doing so, the SJC observed the following:

> That, pending judgment of condemnation, the respondents' land cannot be sold, nor improvements profitably made, nor substantial income derived, are all factors which might commend the fairness of an allowance for interest, but do not convert the taking, when completed, into a deprivation of property without compensation.

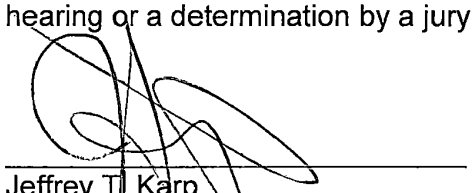
Id. at 529.

ORDER

For the above reasons, it is **HEREBY ORDERED**, **DECLARED** and **ADJUDGED** that:

1. Under G.L. c. 80A, § 13, Northeastern University is entitled to recover reasonable expert and attorneys' fees that it incurred during the c. 80A proceedings, which necessarily began when the Town Meeting members approved the taking on May 15, 2021.

2. Under G.L. c. 80A, § 13, the parties are entitled to a hearing regarding the awarding of expert and attorneys' fees, and they are not entitled to an evidentiary hearing or a determination by a jury of same.



Jeffrey T. Karp
Associate Justice, Superior Court
Dated: February 28, 2025

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JUDGMENT	Trial Court of Massachusetts The Superior Court
DOCKET NUMBER 2177CV00936	Thomas H. Driscoll, Jr., Clerk of Courts Essex County
CASE NAME Town Of Nahant vs. 12.5 Acres Of Land +/- Situated IN Nahant Massachusetts et al	COURT NAME & ADDRESS Essex County Superior Court - Lawrence 43 Appleton Way Lawrence, MA 01841

This action came before the Court, Hon. Jeffrey Karp, presiding, and upon consideration thereof,

It is ORDERED and ADJUDGED:

That Summary Judgment hereby enters for Northeastern University against the Town of Nahant on Northeastern University's affirmative defense of a pretextual bad faith taking.

It is further ORDERED, ADJUDGED and DECLARED:

That: (1) the Order Of Intention To Take Conservation Easement By Eminent Domain issued by the Board of Selectmen of the Town of Nahant on September 8, 2021, that is at issue in the Town of Nahant's Petition To Take Property (Paper No. 1) and that was filed in the Southern Essex Registry District of the Land Court at Document 629107 on September 10, 2021, is NULL and VOID, because the Town of Nahant is pursuing the taking described therein in bad faith for an improper reason; and (2) the Town of Nahant's complaint (Petition to Take Property at Paper No. 1) be and hereby is DISMISSED.

It is further ORDERED and ADJUDGED:

That, on the award of attorneys' fees and costs and pursuant to G.L. c. 80A, § 13 (see endorsement on Paper No. 59), judgment hereby enters for Northeastern University against the Town of Nahant in the amount of $1,035,042.00 for attorneys' fees, which includes expert fees of $303,433.50, plus $9,307.60 for costs, for a total judgment of $1,044,349.60.

DATE JUDGMENT ENTERED	CLERK OF COURTS/ASST. CLERK
05/12/2025	X Anne T. Mitchell

Date/Time Printed: 05-12-2025 13:50:09 SCV131: 05/2016

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss. SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO. 2177CV00936

TOWN OF NAHANT,

Plaintiff,

v.

12.5 ACRES OF LAND+/- SITUATED IN NAHANT, MASSACHUSETTS,

and

NORTHEASTERN UNIVERSITY,

Respondent

NOTICE OF APPEAL

TO: Clerk of the Superior Court, Essex County
56 Federal St.
Salem, MA 01970

PLEASE TAKE NOTICE, pursuant to Rules 3 and 4 of the Massachusetts Rules of Appellate Procedure, Plaintiff, Town of Nahant, appeals to the Massachusetts Appeals Court all findings, rulings, opinions, orders, judgments and declarations of the Court, including but not limited to the May 12, 2025 Judgment (Dkt 60) and all interlocutory decisions and orders subsidiary thereto and subsumed therein, including, but not limited to, the April 26, 2024 Order granting summary judgment in favor of the Respondent (Dkt. 41), the January 21, 2025 Order denying Plaintiff's Motion for Reconsideration (Dkt. 56), and in part, the February 28, 2025 Order concerning Respondent's Motion for Costs and Indemnity (Dkt. 58), and all other adverse orders, decisions, and opinions and awards of damages, fees, and costs by the Superior Court in this case.

Dated: June 6, 2025

TOWN OF NAHANT,
By its attorneys,
GREENBERG TRAURIG LLP



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CERTIFICATE OF SERVICE

I, JAMES P. PONSETTO, hereby certify that, on June 6, 2025, this document was served, by email and first-class mail, on counsel for all parties who have appeared in this action or on the parties if no appearance has been entered.

/s/ James P. Ponsetto
James P. Ponsetto

ACTIVE 711278035v2

Pages: 1-100

COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

TOWN OF NAHANT	*	
vs.	*	Docket No. 2177CV00936
12.5 ACRES OF LAND +/- SITUATED IN NAHANT MASSACHUSETTS	*	
and	*	
NORTHEASTERN UNIVERSITY	*	

RULE 56 HEARING:
BEFORE THE HONORABLE JEFFREY KARP

Newburyport, Massachusetts
January 26, 2024

Elizabeth Marzano
Official Court Transcriber

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By: Kevin O'Flaherty, Esq.

one, not on the land already disturbed, but right in the area where the townspeople have used for decades, some massive breach of trust. And that's what caused this lightning to turn around.

And I could go through every document and show that every time they were asked whether this was motivated to stop the project. It was a way -- it's two sides at the same coin. You can't preserve East Point and not prevent building. Every taking prevents or frustrates the landowners own ideas of what should happen on that. Every single one of them. They didn't.

Northeastern didn't say, we're going to put a school there, or we're going to put affordable housing there the way Burlington did, or a police or a fire station. There was no such subterfuge. It was pure, transparent.

East Point has been important. Northeastern is going to pave it and we have to preserve it. It has been throughout.

THE COURT: Isn't it relevant that the second statement, this part that you're referring to, the header says in boldface and

in bigger font than the rest of it, preserving East Point as a wildlife preserve?

MR. MASTERMAN: To the Town it's determined. The Court has to find on the body of the record whether the predominant -- the dominant reason, it's framed in Pheasant Ridge as the sole or dominant reason. Was the dominant reason the protection of this East Point as a wildlife preserve, as it had been used for 50 years.

I want to say one other --

THE COURT: Can I ask, before I forget, the town warrant. So what is the exact public use that the Town is asserting that the citizens voted on? Because I thought it was an open space. Like, where in the record would I find that? Presumably, I thought it would be in the statement of facts. And it may be -- it may be such an obvious part of the record that you do --

MR. FALLER: Probably the taking order, Your Honor, is the best argument. The taking order itself.

THE COURT: Where is?

MR. FALLER: I have a copy of the taking

order.

THE COURT: Do you know what exhibit it's at?

MR. MCLAUGHLIN: I don't.

THE COURT: So the -- but the take -- yeah, I guess the taking order would stem from the --

MR. MCLAUGHLIN: Yeah, that's what the warrant says. When you give us authority to vote this taking order.

MR. MASTERMAN: It's Exhibit 83, Your Honor.

THE COURT: Okay. So the public benefits and then it talks about conservation values and -- all right, so. I'm sorry. I digress.

MR. MASTERMAN: And, Your Honor, just so the Court can make a note, the Town -- in the town warrant, where the vote -- the vote was on the warrant, as the Court was aware. It's at Exhibit 76. And there's a transcript of the discussion at 78.

But at the corporal line, the Town voted whether to take -- it's an order of intention to take and the selectmen vote an order of intent to take. And that was the vote for

conservation restriction over the area from top of the Murphy bunker, easterly, which coincides with a lot of the conservation restriction discussions that were going on for 20 years, the open space plan.

Was Northeastern's property, included in the open space plan? Yes, it was. The open space plan number two actually spoke about buffer trail. The Court may recall from its familiarity with the other case that the Town has wanted an access buffer trail through the entire peripheral trail throughout the entire east point since Northeastern bought it. Couldn't negotiate it then. It continued to ask for that throughout the open space plan when it actually considered doing it.

The Court asked: Where else would we see -- where else would the Court see -- where else would the Court see evidence that the Town was concerned about the environmental principles?

It shows up in surveys that were taken by the open space committee. It shows up in comments to the DEIR when Northeastern went ahead and had to go through the farm of the EIR

process and the EIR scope. Hundreds of nonresidents spoke about the concerns they have on the scope of the project and the destruction of East Point. It's there. I refer to my notes.

It's rare, the Court says, in Pheasant Ridge that you have to sort of imply from the public officials as to what was going on.

Here, not only do you have the affidavits and the interrogatories, but you have these contemporary surveys and comments that were made by Nahant residents who then go to the town meeting and vote overwhelmingly for the order of intention to take.

Back to the Pheasant Ridge, the two parts of Pheasant Ridge, which I said before, not in accordance with these usual practices. What the Town of Burlington did was it acted precipitously, as the Court noted, five minutes, maybe, rhetorically, just before the town meeting, when they reacted quickly, bypassing every town agency that would have otherwise considered the merits of a taking, whether for conservation.

At some point, Burlington actually talked

about building their own affordable housing. That was in there. There was zero consultation with any town agency and all the Court had in Pheasant Ridge was what the town board of selectmen said.

That's not the case in Nahant, as the Court well knows. Every single committee dealt with this from the time that Northeastern had actually announced the project. Open space committees, community preservation committee. I'm going to talk about community preservation committee in a second.

A planning order, FinCom, that's all about finances, actually weighed in on the merits of the project to preserve East Point. The selectmen, of course, we know.

The community preservation committee and this bears also in the Court's understanding, that pretext also involves this notion of private, but not all the money to fall into all the money. This was not all the money for everything. Because the CPC, as the Court know,s the CPC is the community preservation committee, has a mandate under its statute to support certain things that go on in the Town;

affordable housing, historical resources, and conservation.

They voted to support, to put their money toward this project. This was public money. Was it on the tax rolls? No, because it comes out of these, as the Courts are probably aware.

But the notion this was 100 percent funded by private citizens, which the Town's position is, it's irrelevant, regardless. As the Court has said in Docket No. 25, the motives of the Town, that at least in this case it wasn't 100% of the money. CPC put their money in.

But in terms of the Pheasant Ridge following individual practices, Nahant followed to a T. They did exactly what you want the Town to do. Some was voted overwhelmingly but there were 200 people that voted against it. No question about it. There was opposition. But that's the way it should work.

THE COURT: Can I ask you something, though? On the -- following the normal procedure and all these committees that kicked in, right, basically around, you know, around or after the 2018 presentation by Northeastern, because that's what we're talking about.