



**TOWN OF NAHANT  
Advisory and Finance Committee**

**Members**

Robert Vanderslice, Co-Chair  
John Fulghum, Co-Chair  
Barbara Beatty  
DeWitt Brown  
Jeff Lewis  
Dana Sheehan  
Julie Tarmy  
Judy Zahora

Tuesday March 25, 2021

Members Present: Lewis, Tarmy, Sheehan, Vanderslice, Beatty, Brown, Fulghum, Zahora

Members Absent: None

Others Present: Cullinan, M. Capano, S. Solomon, J. Masterman, E. Potts, A. Bromer, A. Cort, A. Murphy, A. Antrim, S. Murphy, J. Musman, K. Carangelo, K. Marden, D. Monteith, A. Nieto, E. Berman, Peggy, M. Rauworth, J. Antrim, M. Patek

Meeting called to order at 7:03

Members of BOS were asked to join this meeting to bring us up to date on NEU/Em. Domain.  
No Assessor available tonight.

M. Cullinan.

- Preparing mater plans and researching deed
- Completed and accepted financial analysis from RKG
- Art 97 lawsuit ongoing. Superior Judge Carp suggested that this needs to go to trial before a jury. NEU removed its request for summary judgement, meaning to dismiss the case.
- Trial will happen in February 2022

Sec 80A is Em. Domain route being pursued.

- This choice will eliminate additional risk to town
- \$4.5 million will be on hand when time comes
- BOS will not commit any addition funds other than what is approved through CPC. \$1.5 million. Very confident in the appraisal of the property. Looking at a 60 – 70 reimbursement from the state.
- Town's choice is to vote to preserve this parcel of land as natural resource in perpetuity, which was vote on 30 years ago OR sit back and allow NEU to construct a 55,000 sf structure, geothermal field, and 125-car parking lot there at a significant cost, according to RKG's report, to the taxpayers of the town.

One final comment: NEU has refused to negotiate or mediate over the past few years without pre-conditions. We are not against the mission of NEU – we are against building on the proposed site.

Jim Masterman, Eminent Domain atty. Discussed legal strategies. Walk us through 80A process.

- I am a former member of Needham Finance Committee



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- Why are we pivoting to 80A, instead of chap 79?
- In traditional 79, there can be no uncertainty of title. Great majority are done by the BOS to adopt an order of taking. Once recorded in the Commonwealth, sort of a quick take, the certainty of just compensation must take place.
- Alternative procedure – most states initiate eminent domain proceedings by filing a lawsuit. Chap. 79 is completely administrative
- Under 80A, it adopts an order of INTENTION to take. Must state how much money is to be paid.
- Once this order of intention to take is adopted by the board, within 10 days we have to file a lawsuit.
- With 79, if the landowner is aggrieved by the amount of money, then THEY start the lawsuit.
- With 80A, we believe we started the taking properly and the amount of money is correct.
- The landowner may say, I don't think so, so the court appoints three commissioners/magistrates arbitrators from the county(Essex) that may have some understanding of real estate. It is at the Judge's discretion.
- Those commissioners will make a decision. It may agree with the Town. It may agree with NEU.
- They will report to the judge.
- At that point, the town has two options: assume that the commissioners have decided that the amount of \$ that the town has set aside is too low. The Town has an opportunity to abandon the taking at that point if the \$ amt is too high, without owing any monies for cost. The Town COULD owe NEU some \$ for losses connected to their not being able to use their land, which might be difficult to assess.
- Option 2: commissioners agree with \$ offered by Town. NEU can say we are done and take the money, or appeal for a jury trial if \$ is too low.
- Assuming that a jury trial is adverse to the Town and the Jury agrees with the Commissioners that the \$ is too low. The Town can still abandon the taking. There may be some costs to the Town.
- Once final judgement is entered, there is no going back.

80A allows the flexibility to abandon the taking. (FAQ fact sheet)

DS: If the town decided not to go forward with the taking, and the Town is responsible for NEU legal fees? How much would this be?

JM: Is the question if the Town would be responsible for Atty's fees?

DS: Yes. Isn't that what you said?



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JM: No. Atty's fees are a different issue. They are awarded by statute. Here the statute, it says that expenses, if abandoned, would be paid by the town. There is a question as to whether it includes Atty's fees. I don't think it does, but the court could include atty's fees

JF: Who would pay for the commissioner's expenses?

JM: That would be split

JZ: How long do you think this could take?

JM: I can only give you this example: I am involved in another matter with another town. We went to get a trial date and were assigned May of 2022. This is from a 2019 case. In Chap 80a process, if the town authorizes, and the board initiates an order of taking in June of this year. The lawsuit is started immediately; the court appoints the commissioners within 60 days (September). Then it is up to the commissioners to set a date. It could be by the end of the year. A Jury trial, I couldn't say.

RV: In our situation, when in that time line would NEU be prohibited from further development

JM: Fair to say that if we commence the 80A process that a judge would, I think, not allow Northeastern to proceed.

JZ: There is a possibility?

JM: Yes, but highly unlikely.

JL: Opinion question, which method – 79 or 80A gets them to the bargaining table faster? In my opinion, 79 get them there faster.

JM: If Town meeting was to authorize the board to take by eminent domain, but leaves it to the board to make a decision one way or the other, the board doesn't have to act immediately. It is now authorized to take. Merely having the board AUTHORIZED to take, rarely motivates the land owner. If the board proceeded under Chap 79, it must be reported within 30 days and you own it. Can't go back. Town is in better position mitigating the issue of value before making a decision to take.

JZ: If they can continue with their process of building, they could have the project done while the process is going on.

JM: I think that is right, but highly unlikely that the court would allow this.

DB: The town must reimburse NEU for all of its costs and for the loss of the use of its property?

JM: Costs and Atty's fees are two separate things. Costs are expert fees, exhibits, etc. Atty exp is separate. If I could come with certainty, I would, but it is not usual.

MC: We have set aside \$500K of the CPC grant for legal fees.

JM: the \$500K in CPC article will certainly take us through commissioner phase, may take us to a jury trial – reasonable amount.

JL: Article 22 does not specify 79 or 80A.

MC: At next meeting, on April 1<sup>st</sup>, BOS will open warrant and add the verbiage into the Article.

RV: It would specify 80A and that there is a cap to the town's investment?

MC: Yes.

JF: What happens to the Article 97 lawsuit in the event of Eminent Domain?



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MC: If we go through with Eminent Domain, we will abandon the lawsuit. No need to pursue, unless we don't take it.

JM: The question would be as to when. If Art 97 goes to jury, you would have to act quickly on 80A.

BB: Do I understand that the town, if this is voted on, that the voters decide on the estimate.

JM: The statute requires the town to estimate.

MC: Appraisal is already done.

JM: We are dealing with an expert opinion regarding value. Value can be determined by the use being considered for the property.

JL: If we went chap 79, Nahant becomes the owner?

JM: Yes,

JL: Crazy question. If NEU says, ok, you proved your point, you took it, we will give you what you want, let us go forward. Can you back out?

JM: One, you can't reverse time and say the taking did not happen. You would have to go to the court to reverse. I have never seen this done.

RV: Another crazy question. In the process of Eminent Domain, whether 79 or 80A, does a not-for-profit have any special rights or privileges ala the Dover Amendment?

JM: No.

DS: Quote from the article: To see if the town will authorize the Board of Selectmen to acquire by purchase and or eminent domain all or a portion of the parcel of land located at the 430 Nahant Road. Is the Town going to take all?

MC: We will have a plan attached to this article to indicate exactly the areas we plan to take? It will not be all.

DS: Thanks. Is the article going to specify whether it is conservation easement or take the property as a whole?

MC: It will either specify in the article or in the motion on the floor.

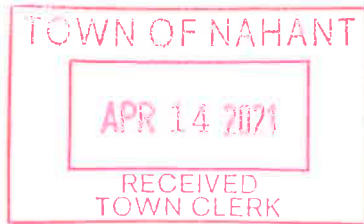
DS: Thanks.

MR: Are questions from those not on the board now in order?

BV: Yes, go ahead.

MR: Assuming that the town wishes to maintain flexibility and that the article specifies the option to choose 79 or 80A. Mr. Masterman, assuming the town wants to use 79 to bring maximum pressure on NEU to negotiate. Filing the order of taking is not reversible. It needs to be recorded. Is it possible to withdraw such an action?

JM: If the board was authorized to choose and decides to go with 79. And it adopted an order or taking. It must record that order within 30 days or that order will be void. It's debatable as to whether the court will continue to take order after order.



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MC: I want to be sure everyone understands that this would be the taking of a conservation easement. We are not affecting Northeastern's current operation at all. We expect them to continue doing what they're doing uninterrupted. We are not affecting their operation in any way.

RV: Ken Carangelo made a like a decision tree flow chart to share. Can you, Mr. Masterman, tell us if he has captured this properly? (see attached two flow charts – #1 has questions, #2 has answers provided by Mr. Masterman)

RV: Appeal cannot be on value but only on a matter of procedure?

JM: No, it's always about they shouldn't have let in some piece of evidence, so it does go to value.

JZ: This would be valuable for the citizens to see this.

KC: Will send to Julie. In the instance where the commissioners agree with a higher amount, agreeing with NEU scenario, the town can abandon or is the town obligated. Can the town agree to pay higher amount? This is where the stopgap comes in. When does this go to the voters?

JM: At any time, the Town is prepared to pay with NEU higher number, I am sure NEU will be happy with the final judgement.

KC: In the authorization, the point of the 80A is to stem the financial risk, which is fine. Is it written in the warrant that is it only up to a certain amount, or where is the stop gap to the town to pay the higher amount?

RV: I think that this warrant article will specify. Is that right Mark?

MC: Yes.

KC: Will this be made of private funds?

MC: It will not exceed the public funds?

BB: What happens if it ends up at the SJC?

JM: That would be after a jury trial. The SJC could say that everything was done properly, or it could say that there were mistakes, or some evidence was allowed in that should not have been, and send it back for further proceedings.

JZ: Time. How long are we talking about? 5 – 10 years before settled.

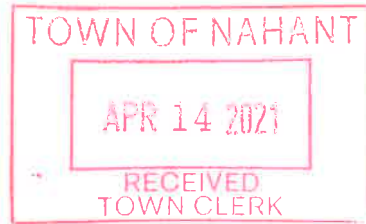
JM: Pre-pandemic within 18 – 24 months. May be longer now. I have been in front of SJC three times in my 30-year career if landowner challenges right to take.

JZ: I appreciate all of this information but am worried about being hung up for years. I worry that we talk about asking them to enter into negotiation. What would make NEU think differently now? I don't believe they will be influenced.

MC: NEU will have an opportunity sit down and negotiate if we get to that point, and I hope they do. I do think there is a mutually negotiable position here. There is a middle ground that I believe most town people could live with and NEU could live with. I hope we get to that point.

JMusman: Could we pursue this conversation about whether this project is going to go forward or not during this process?

JM: We would ask the court to stay all NEU actions during this proceeding.



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JMusman: you would normally ask that NEU stay their actions. They won't necessarily do that. What if NEU continues to go forward and spends \$25 million land we take the land. What happens to their \$25 million improvement?

JZ/RV: Excellent question.

JMusman: Do we have to compensate them for the \$25 million, #1, and #2, am I wrong in thinking that this is only at their risk, rolling the dice, knowing that we are going to take that property?

RV: Or are they somehow held liable for doing \$25 million worth of damage to something that ultimately was going to the town?

JMusman: That's why they would likely enjoin the case because is intended to preserve conservation land and to allow them to move forward on conservation land defeats the very purpose for which we are trying to take the property.

MC: Town counsel will probably weigh in here, but with pending lawsuits, I am not sure that permits will be issued.

DS: Do we have any idea how much NEU has spent so far? Are we responsible for this?

JM: No, the expenses would be on the proceedings, not what they have spent already. Don't see exposure – NEU expenditure in getting ready for development would not – in my opinion – be responsibility under 80A. If we abandon – we owe cost associated with action, not cost before.

JZ: Thank you, very helpful.

RV: Mark, could you talk to any attempts at mediation:

MC: We have reached out to NEU at the request of Judge Carp. We sent out a letter. NEU Hs not returned any calls or responses to letter. I will answer the phone whenever they call. We will get article info to FinCom after 4/1/21 BOS meeting.

KC: Sent revision of 80A process question. Could Mr. Masterman respond? (See #2 flow chart)

MC: Ken, remember that BOS cannot expend funds without approvals.

JZ: NEU sent out a new pamphlet stating that the town will not talk to them.

MC: We have not heard from them in response to our calls/letters.

JZ: We need to be prepared to respond to NEU's misleading statements.

RV: Sort out truth from hyperbole.'

JZ: We need to respond.

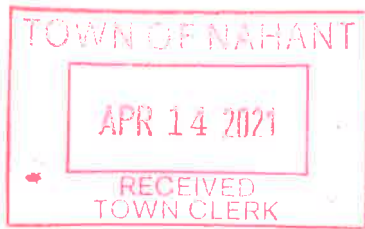
M: We are prepared to respond.

DS: How much tax payer \$ has been spend on legal fees on this?

MC: None. Most, if not all, has been paid through donations.

Many thanks for Mr. Masterman.

RV: Minutes to approve then continue with articles.



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Sheehan had edits for both 9<sup>th</sup> and 16<sup>th</sup> minutes which were accepted by the committee.

**Motion made by Zahora to accept March 9, 2021 meeting minutes as amended, seconded by Brown. Fulghum, Brown, Zahora, Lewis, Vanderslice, Tarmy ayes. Beatty abstains.**

JL would like to change his vote on Article 23<sup>rd</sup>. We cannot change the minutes of the 16<sup>th</sup>, but we can revisit article 23 in tonight's meeting.

**Motion made by Brown to accept March 16, 2021 meeting minutes as amended, seconded by Sheehan. Brown, Sheehan, Lewis, Vanderslice, Fulghum, Tarmy, Zahora ayes. Beatty abstains.**

Article 23 in version 5 Warrant. MWRA borrowing

JL: Would like to vote against Article 23 as written. When we vote this article, I think in terms of source and uses. This is a use of \$200k. We are using this similarly to a line of credit, even though it isn't. When it is paid, it will be included in the debt exclusion of the water/sewer fund. In essence, we are voting to skip the 2 ½ override and add \$200k to our property taxes sometime in the future. When it comes time to pay, we don't ask the town... debt exclusion is an increase to our property tax. Basic premise – taxpayers should not be paying for the w/s – should be a debt exclusion of the w/s fund not the general fund. Motion made to revote Art 23, and then withdrawn.

Discussion followed on paying by household or per capita. Borrowing under MWRS says taxpayers pay – not all users. Debt shift better term than debt exclusion. **Decision made not to revote Article 23. Need to continue this discussion after Town Meeting. Definitely worth exploring, definitely excellent points.**

On to Warrant Articles:

**Art 7: Water/Sewer Enterprise – Motion to approve by Tarmy, seconded by Brown. Unanimous ayes.**

**Art 9: Rubbish enterprise – Motion to approve by Beatty, seconded by Zahora. Unanimous ayes.**

JL: \$75K debt?

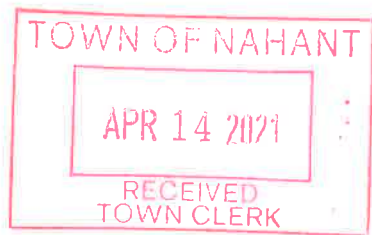
AN: recycling costs-retained earnings.

**Art 11: Recycling carts – more efficient collection – waste contract – prevent containers from being tossed about by winds. Motion made by Beatty to approve, seconded by Tarmy. Unanimous ayes.**

- John will start folders in google docs on what we want to do going forward

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- Making amendments to articles from the floor?

RV: More difficult than it sounds.

JZ: Nice that BOS has been more collaborative this year.

Assessor's office and CPC joining us next week? Austin not sure when CPC will be ready. Discussions on combining some of the CPC articles. Arranged for CPC to meet with FinCom on April 1<sup>st</sup>. Will post meeting. Two meetings next week.

**Motion to adjourn by Tarmy, seconded by Beatty. Unanimous ayes.**

**Meeting adjourned at 9:24 p.m.**



**TOWN OF NAHANT  
EMINENT DOMAIN PROCEDURE UNDER CHAPTER 80A  
FREQUENTLY ASKED QUESTIONS**

***What is the procedure under Chapter 80A?***

Upon authorization of town meeting:

- The Board adopts an Order of Intention to Take.
- The Order describes the property, states the interest taken and the purpose for the taking.
- The Order includes an estimate of just compensation.
- The Order must be recorded within 10 days of adoption in the Registry of Deeds.

***Is there litigation under Chapter 80A?***

Yes. Within 10 days of recording of the Order, the Town must commence a lawsuit in court (i) to establish the right to take, and (ii) for a determination of just compensation.

***What is meant by the right to take?***

The Town must demonstrate that (i) it has the power of eminent domain, and (ii) the taking is for a valid public purpose.

***What is the procedure for the determination of just compensation?***

The judge will appoint a panel of 3 commissioners (similar to arbitrators). The commissioners will hold a trial and decide the amount of compensation owed.

***What if the amount of just compensation decided by the commissioners is too high?***

The Town has 2 options, to either (i) appeal (redetermination of compensation), or (ii) abandon the taking.

***What is meant by an appeal?***

If the Town believes that the commissioners' decision is too high, and conversely if Northeastern believes that it is too low, either party may appeal to the court for a trial by jury within 20 days of commissioners' decision. The commissioners' decision is evidence of value at the jury trial.

***What is meant by abandon the taking?***

At any time before the court enters final judgment, the Town may unilaterally stop its efforts to take the property by eminent domain altogether. This may occur at any time including before or after either the commissioners' trial or jury trial.

***Are there any costs to the Town if the taking is abandoned?***

Yes. The Town must reimburse the owner all of its costs and for the owner's loss of the use of the property for the period of time between adoption of the Order and abandonment. Business loss is not recoverable.

Ken Canamelo #1

## 80A Process

