

**CUMBERLAND PUBLIC SAFETY COMPLEX SITE LOCATION COMMITTEE**  
**MEETING MINUTES**

Meeting, Monday, May 11, 2015  
6:30 PM

**Call to Order at 6:30 PM**

**1) Call to Order - Attendance Roster:**

**State and Town Officials:** Councilman Robert G. Shaw, Councilman Peter J. Bradley, Councilman Scott Schmitt, Councilman Arthur Lambi

**Committee Members:** Sean Thompson (ex officio), Josh O'Neill (ex officio), John Desmarais (ex officio), Mark Lindgren, Thomas Cabana, Kim McCarthy, Pam Thurlow, Alan Bourgette, Jeff Mutter, Alex Marszalkowski, Tom Letourneau, Frank Matta, Tim Draper, Dana Newbrook

**Committee Members Absent:** None

**Members of the Public that spoke during the Public Comment period:** Jayne Guertin, Tom Ayotte, Frank Geary, Gus Uht, Kevin Kelley, Dave Raymond, John Cullen, Roger Cross, Dan Bodandi, Bob Evans, Annete Tebow Hulion, Ron Gravlin, Linda McDermott, Alexandra Curran, Michael Boday

**2) Approval of April, 28 Meeting Minutes:** The Minutes were approved by a unanimous voice vote of Committee members present.

Mark mentioned that the Drop Zone property is subject to a parking easement in favor of Sher-Le-Mon Swim Club, and that the net available land for construction would be approximately 1 ½ acres.

**3) Sean Thompson Summarizing Space Needs Studies and Acreage Requirements**

Sean Thompson summarized the Kaestle and Boos study which stated that 24,000 – 26,000 square feet was the estimate for total space needs for a new public safety complex. He stated that Criterion Associates developed the 3 fire station model for the study of the consolidation of fire districts and at that time there was some consideration for having all public safety agencies under one roof (e.g. fire, police, and EMS). The Fire Department then pulled out of the study and the space needs analysis looked at police and EMS only. The new estimate for a public safety complex with police and EMS started at the cost range of \$14-\$16 million and the “Plan C” study brought the cost estimate down to \$12 million. Renderings made from “Plan C” were shown to this Committee at a previous meeting. A poll was done in 2013 by Joe Fleming which showed that the results were favorable. Finally, as everyone is mostly aware, the \$12.5 million bond passed initiative was passed by voters on the November ballot.

Since the agenda item mentioned both space needs and acreage needs, Kim asked what Sean thought were the acreage needs based on what he has stated. Sean stated Mike McKeon estimated a minimum of 5 – 7 acres would be needed. Sean stated that the new complex would need room for outbuildings for equipment storage. The renderings are a “vision” based on space needs analysis. Kim stated that she had talked with Mayor Murray since the last meeting

regarding her question about being limited to searching parcels within the 6-10 acre criteria and she is waiting for a response. Kim asked Sean whether the Mayor asked Sean to speak at this meeting on this issue, and if this was intended to be the Mayor's response; Sean indicated that it was not. Kim stated that she is asking the Mayor to either drop the minimum acreage restriction altogether, use a more functional size requirement (rather than specific minimum acreage), or to authorize a variance from the 6-10 acre requirements so that smaller parcels could be considered before the final meeting.

#### **4) Town Solicitor Presentation of Town's Legal Opinion on Restrictions for Building on the Monastery Property**

Town Solicitor Tom Hefner introduced himself to the Committee. He stated that he has been an attorney since 1978 and has been the Town Solicitor for 20 years.

Tom then posed a rhetorical question; what is the Monastery? He stated that most people understand it as the location near the library and the adjoining land where the town maintained walking paths exist. He stated that the Monastery land is roughly 500 acres and encompasses much more land than what most people experience everyday as "The Monastery". The land at issue is in the northern corner of the property. It is the administration's opinion that building in this section will not inhibit existing trail systems as the location previously discussed in the northeast part of the land north of the power lines is not currently where any Town maintained trail systems exist.

Tom then went into some of the history of the restrictions on the land. He stated that the Monastery Land was purchased in two separate transactions in 1968 and 1972. Tom stated that when a party purchases private property they take on the existing easements. In 1968 and 1972 there were constraints on the property that existed and they have now expired.

He stated that in 2004 the Town Council passed the section 28-7 ordinance which stated that there would be no more building allowed on the land, adopted the Conservation Easement, and authorized the Mayor to sign and record the Conservation Easement. All future uses would now have to be in line with the covenants and restrictions imposed with the 2004 Conservation Easement.

In Tom's opinion, the Town put the restrictions on the land, and the Town can remove the restrictions as well.. The Conservation Easement, Ordinance, and Management Plan can be removed or revised by a vote of the Town Council.

Tom then discussed the statute that governs conservation restrictions, RIGL Chapter 34-39, which Kim has mentioned previously in her memo to the Town Council last year. Tom stated that Kim's contention is that the Attorney General has to join a suit to remove the Conservation Easement and that the Town would have to go through this process.

Tom stated that, in his opinion, RIGL Chapter 34-39 was enacted in reaction to a 1972 case cited as "Angel vs. City of Newport". This was a private property donation which caused the property owner to take on existing restrictions.

Tom mentioned that the Town paid nearly \$400,000 in 1968/1972 dollars, and was intended to be used for public facilities. Tom stated that the tax rate for residents in 1968 and 1972 was increased by the cost of this land, and therefore the Town should not purchase any new land for public buildings, and he considers it unbelievable that the Committee might consider that option.

Tom stated that it would be unbelievable if the Committee did not recommend the Monastery as a site since the town already owns the land and it is centrally located just as the Committee's criteria has asked. Tom will recommend to the Town Council that they vote to revoke the 2004 ordinance and immediately begin construction of a Public Safety Complex, new Town Hall, and new Senior Center on the area of the Monastery land that has been discussed. If the Committee recommends this site he will send this information to the Attorney General along with his legal opinion. If the Attorney General indicates that a filing is needed for Superior Court he will do that as well.

Kim asked Tom whether the sole basis for his opinion is that RIGL Section 34-39-2(a) (the definition of "conservation restriction") does not apply to the Conservation Easement. Tom responded yes – restrictive covenants would have to be put on by the other party; that is how he interprets the statute.

Kim stated that RIGL Section 34-39-2(a) states that a conservation restriction means, in relevant part, "a right to prohibit or require a limitation upon ...uses of ... land ...whether stated in the form of a restriction, easement, covenant, or condition, in any ... instrument executed by or on behalf of the owner of the area...which ...is appropriate to retain or maintain the land ... or is appropriate to provide the public the benefit of the unique features of the land ... predominantly in its natural, scenic, or open condition...or in other use or condition consistent with the protection of environmental quality". She also stated that RIGL Section 34-39-4 states that conservation restrictions are interests in real estate and a document creating a restriction shall be deemed a conveyance of real estate, and that RIGL Section 34-39-6 states that the Attorney General can enforce a conservation restriction as the guardian of the public interest. She asked Mr. Hefner to explain his legal reasoning that RIGL Chapter 34-39 does not apply, in light of these statutory provisions.

Mr. Hefner responded that, In the City of Newport case, the owner put the restrictions on and bound Newport; since Cumberland self-imposed this restriction they can take it off.

Kim indicated that the Committee had been waiting a very long time to receive the Solicitor's legal opinion, and anticipated that it would be more detailed and comprehensive. In Kim's opinion, it appears that there has been no additional legal research or analysis since the issue was initially raised in July 2014. Kim indicated that she anticipated that the Solicitor would have consulted with the Attorney General or performed additional research and analysis, so that the Committee could have some level of comfort that building on the Monastery land was not prohibited by the Conservation Easement and Chapter 34-39.

Tom indicated that he did not request an opinion from the Attorney General because no one asked him to do so, and that he saw no reason to contact the Attorney General or spend the money to consult a real estate attorney unless and until the Committee voted to recommend the Monastery as one of the sites.

Kim indicated that the Committee had been waiting to vote on the Monastery until they received the Solicitor's opinion so that they would have a level of comfort that building on the Monastery was legal. Kim also suggested that, without further information and analysis, if the Committee recommended this site it will be nearly impossible that it will be built on without litigation.

Kim asked again whether the sole basis for the Solicitor's legal opinion was that RIGL Chapter 34-39 doesn't apply because the town imposed the Conservation Easement itself and, if so, the basis for that contention. Tom said yes and that he had explained that before, mostly because that chapter came on the books because of the Newport case. Tom L. told Kim that Mr. Hefner has given his opinion; and stated that we don't need to argue this all night. Kim responded that the entire reason for this meeting was to identify any legal restrictions on building on the Monastery, and that her questions were designed to determine the legal reasoning supporting the Solicitor's opinion. Since the opinion was not as comprehensive as Kim had expected, Kim recommended that the Committee request that the Town obtain an independent legal opinion on this matter.

Kim asked whether she could summarize the reasoning behind her opinion that the Conservation Easement could not legally be rescinded, and Mark indicated that, in his opinion, it did not make sense to present a detailed legal argument, as the majority of the Committee members would not likely understand the intricacies of the arguments anyway. He reiterated that the Committee had requested a legal opinion, and Mr. Hefner had provided his legal opinion.

Pam stated that it sounds like the disagreement on the Monastery land restrictions boil down to an interpretation of one statute. How you interpret that statute depends on whether or not the Town can remove the conservation easement and associated restrictions, and asked whether we can request the opinion of another attorney or the Attorney General.

Jeff Mutter asked Mr. Hefner whether it is legally permissible for the Town Council to put a restriction on the land owned by the Water Department. Tim asked why the Water Department land is listed as separate on the tax records, and whether Mr. Hefner could look into that as well. Josh and Tom indicated that the town maps and tax records do not always list the correct owner. Tom indicated that he would have to research the Water Department parcel as he was not sure why that shows up as owned by the Water Department and not the Town of Cumberland. Kim asked whether the Water Department is a separate legal entity; Tom indicated that it is not. Josh indicated that the land listed as Water Department property (plat and lot number) is included in the Conservation Easement that denotes the total land area of the Monastery. Mark also noted that the actual water tank on the property straddles the property line between the Monastery and the land listed as Water Department property, which would indicate that it is all owned by the same Owner (Town of Cumberland).

Jeff stated that he thinks that this Committee should ask the Mayor to get an opinion from the Attorney General on the legal permissibility of building on the Monastery land, as well as clarification on the Water Department issue. He indicated that he is not afraid of any litigation; that could happen at any time. Jeff stated that he wants to know from the Attorney General about the Conservation Easement, and about the Water Department issue, before the Committee makes a recommendation. Mark indicated his concern about the fact that the Committee would not have an "official" opinion prior to the next meeting, or even before the Committee's deadline

date of June 15<sup>th</sup>. Under these circumstances, the Committee may have to vote on consideration of the Monastery land without the opinion of the Attorney General.

Josh clarified where the Committee was with motions and that there were 2 possible motions to be made regarding the Monastery land: one regarding seeking an opinion from the Attorney General and one to continue the site for further consideration at the next meeting.

Jeff made a motion that the Town Solicitor ask for an opinion from Attorney General on how RIGL Chapter 34-39 applies to the Monastery, including the Water Department issue. This motion was seconded.

The Committee voted by unanimous voice vote to have the Town Solicitor seek an opinion from the Attorney General's office regarding how RIGL Chapter 34-39 applies to the Conservation Easement, and the impact of the Water Department property.

Another motion was made and seconded to continue discussing the Monastery land at the May 26<sup>th</sup> meeting.

The Committee voted by unanimous voice vote to continue consideration of the Monastery Land at the May 26<sup>th</sup> meeting.

A member of the public wanted to ask questions of Mr. Hefner at this time, but was told that questions from the public would not be allowed until the public comment portion of the agenda. The audience member asked whether Mr. Hefner would remain available to answer questions until the public comment portion of the agenda, and Mr. Hefner indicated that he would do so.

Chairman Mark Lindgren then reviewed a series of maps of the Monastery land and section the Town has proposed in the northeast corner for a possible location of the future public safety complex. He made clear that these were maps he had created, and for the sole purpose of showing wetlands, utility easements, and similar features of the area of the Monastery that would most likely be used if it was recommended by the Committee. He noted areas bounded by wetlands, power line easements and utility corridors and discussed the fact that he believed there were at least 14 acres of buildable land in that area of the Monastery. Mark also strongly stated that this map did not imply that the Town would seek more than the 6 – 10 acres contained in the guidelines presented by the Mayor at the Committee's first meeting. He reiterated his opinion that there were approximately 14 acres where the facility could possibly be built

## **5) Sites Continued from Previous Meeting**

### **National Grid Property Plat 39 Lots 24, 27 and 64**

No new information was available and no discussion was had. A motion was made and seconded to continue the National Grid property as a site for consideration at the May 26<sup>th</sup> meeting. The Committee voted by unanimous voice vote to continue consideration of the National Grid property at the May 26<sup>th</sup> meeting.

### **Plat 33 Lots 188 and 158 off of Mendon Road**

No new information was available and no discussion was had. A motion was made and seconded to continue this property off of Mendon Road as a site for consideration at the May 26<sup>th</sup> meeting. The Committee voted by unanimous voice vote to continue consideration of Plat 33 Lots 188 and 158 for consideration at the May 26<sup>th</sup> meeting.

#### **6) Sites Submitted or Proposed for Committee Review**

There were no new sites submitted for consideration at this meeting. Josh mentioned that the Mayor is still discussing some options with private Owners, but that he has not made any progress since the last meeting to bring any of these to the Committee.

#### **7) Other Sites for Consideration at Future Meetings**

Debra Vine Smith mentioned that she wanted the Committee to consider building behind the Garvin School and next to the existing Police Station. Josh stated that this idea was already voted down at an earlier meeting and that a couple variations of this idea were proposed at the time and deemed not feasible by the Committee.

Alan Bourgette and Thomas Cabana stated that J.H. Lynch would like to do a presentation at the next meeting and requested that it be added to the agenda.. Josh stated he would get in contact with them and prepare it for the next agenda.

#### **8) Public Comments**

##### Jayne Guertin

Jayne asked, in light of Mr. Hefner's statement that the Town placed the Conservation Easement on the Monastery land so the Town can remove it, who is the "Town"? Members of the Committee indicated that it was the Town Council, and Jeff explained that the Mayor had nothing to do with the imposition of the Conservation Easement, it was 7 people on the Town Council that made that decision. She asked if the land was taken how would it affect the tax exempt status. Tom H. and Kim said that it would not as it is still town owned.

[Mr. Hefner left the meeting at some time during the public comment period.]

##### Tom Ayotte

Tom asked if the Town amended or removed the Conservation Easement to allow the public safety complex to be built at the Monastery, would the Town strip the easement protection off all the Monastery land. Josh said that does not have to be the case and that the Mayor has proposed in the past a concept of preserving the remainder of the land through a trust or legal instrument for a limited time, such as 10-20 years, if some of the land was used for a new public safety complex. Tom indicated that this is a slippery slope, and that the Monastery might have no protection in the future if we don't leave the Conservation Easement intact.

### Frank Geary

Frank stated that these are some of the most important meetings that the town has ever had and asked about the impacts upon abutting neighborhoods, such as increased traffic in Chapel Four Corners. He stated that the trails are important and should be respected. Frank indicated that the Town Council put restrictions on the land for a reason; so don't tear it apart. Frank also indicated that the push to use the Monastery land for the public safety complex is a holdover from the last administration.

### Gus Uht

Gus stated that he is not an abutter, so there are no NIMBY issues with him, but he still is not in favor of the Monastery property being used. He stated that it shouldn't be done and the property must be saved in perpetuity. Attrition is the problem; once the Conservation Easement is compromised, the land will be used up in bits and pieces. Gus indicated that he had seen Kim's legal presentation regarding the Conservation Easement and Chapter 34-39 at the 2015 Land and Water Conservation Summit, and recommended that the Committee and general public view it as well.

### Kevin Kelly

Kevin indicated that the parcel shown on the maps Mark presented appeared to cover as much land as the Post Office, Dave's, and the adjacent parcels, a huge area. Mark reiterated those were his maps, and not necessarily the land that would be requested/used for the public safety complex. Kevin asked Sean if all 13 acres that were shown on the map were necessary and what does the rescue department need. He feels that the best solution would be rebuilding only the police station. Sean responded on the age and inadequacies of the rescue buildings. Sean also reiterated the past studies and the 3 station model. Mark noted that the Committee's charge is 6-10 acres for a public safety complex.

### Dave Raymond

Dave asked if there was any money in the bond for land purchase. Committee members responded that there is no money specifically set aside to purchase land. He also asked if the Valley Falls Fire Department land could be used. In the future you can add fire to the municipal government. Sean explained that this Committee was not here to discuss systems of care but a location for a public safety complex.

### John Cullen

He stated that we as a Town have made a commitment to keep this land as passive recreation since it was originally purchased. He discussed the Cistercians history and that Mr. Hayden stepped in and purchased the land to prevent residential development. He stated that was Mr. Hayden's vision was to stop any development of this land, which was supported by the Conservation Easement, and that this is a promise that should be kept.

### Roger Cross

Roger said that his understanding is that the Mayor has said he would not consider property under 10 acres. Mark reiterated that it was 6-10 acres and that is the criteria that the Committee is required to use in looking at parcels of land. Roger stated that the Town Council voted last year to take the Monastery site off as a consideration on the election ballot, so why are we reconsidering the land again? Roger also stated that the Monastery property was like Cumberland's Central Park. Even though Central Park land might be worth billions of dollars, everyone would be up in arms if the Mayor of New York suggested building a new City Hall or public safety complex in Central Park. This is analogous to using the Monastery for the proposed building, particularly since Mr. Hefner specifically stated that the plan is not just for a public safety complex, but also a new Town Hall and senior center. Roger also indicated that he had wanted to ask Mr. Hefner some questions, including whether there was any way to protect town land forever, since it seemed from Mr. Hefner's presentation that it was impossible.

#### Dan Bodandi

Native Americans want this land preserved (Wampanoag). He recommended to all of the members of the public present that they should tell the Town Council that the citizens of Cumberland will not allow this building to be constructed on the Monastery.

#### Bob Evans

Traffic is already a major problem in this area. With the construction of Okonite, the new gas station/convenience store/car wash, it is only getting worse. And it will get worse if the public safety complex is built at Chapel Four Corners.

#### Annette Tebow Hulio

Annette asked if we could propose the site across from the police station possibly closing N. Garden Street. Josh and Mark indicated that we had already considered that site, and the Committee had voted against further consideration of this land.

#### Ron Gravlin

Ron stated that the Monastery is not the place to build. He proposed a private parcel to the Mayor and wants to know if he is pursuing that. Josh stated that he is and maybe Ron would want to reach out the Mayor's office on these issues.

#### Linda McDermott

Linda discussed that she loves the Monastery for hiking and cycling and also explained that it is an oasis and a buffer for nature, and that would be lost if the public safety complex or other buildings were constructed so close to Nine Men's Misery.

#### Alexandra Curran

Alexandra asked how the site will eventually be selected and if June 15<sup>th</sup> was the deadline. Jeff Mutter answered that eventually the Committee has to give the Mayor their recommendations, and the deadline for the Committee is June 15<sup>th</sup>. Jeff stated that the Committee can recommend

multiple sites or no sites at all. He stated that a lot of things could happen and it will be up to the Mayor on what he wants to do after the Committee's work is done. Alexandra indicated that she was disappointed that Mr. Hefner did not stay to answer the public's questions, and that his legal opinion was not as robust as the public expected.

Mike Boday

Mike stated that he hopes that we can preserve this land and break the cycle of de-forestation, which can negatively impact the economic climate of a community. In deciding whether to build on the Monastery, we should consider what are our priorities as a Town.

### **End Public Comment**

9) Motion to adjourn at 8:58 PM.

The next meeting is currently scheduled to be held on May 26<sup>th</sup> in Meeting Rooms 1 and 2 of the Cumberland Public Library at 6:30pm.

Respectfully Submitted,

Josh O'Neill, CFM, MPA  
Staff