

**Note: Following the release of the “Second Statement of the Nahant Board of Selectmen, dated June 24, 2020 Preserving East Point as a Wildlife Preserve” the BOS received request to respond to a number of questions (see below). This is the BOS response to those questions. Please use the following index in reviewing the BOS responses.**

- 1) Black text = the questions as they were presented**
- 2) Blue text = responses by Joshua Antrim**
- 3) Red text = responses by Mark Cullinan and Gene Canty**

**To: the Nahant Board of Selectmen (“BOS”) – Follow-up  
Re: Preserving East Point as a Wildlife Preserve - Second Statement of the Nahant Board of Selectmen, dated June 24, 2020 - Follow-up  
From – Concerned Nahant Taxpayers  
Date: July 8, 2020**

**Josh’s opening comments:**

Your letter suggests that there may be a misunderstanding of how Community Preservation Committee (CPC) applications work. So before responding to the specifics of your letter, I will provide some basic facts about CPC applications.

Anybody can apply to Nahant’s CPC for a grant for any of the approved reasons (historic preservation, recreation, open space, and affordable housing). Town entities routinely apply for CPC grants, including Nahant Police Department, Nahant Fire Department, Nahant Historical Society, Nahant Public Library, etc. Private Citizens may also apply for CPC grants for the approved public purposes. In this case, the Board of Selectman submitted a CPC grant application. The BOS’ application was one of 20+ applications submitted to the CPC this year.

To be clear, the BOS are not imposing anything on the citizens of the Town. All 3 BOS members have made our position clear, well before we were elected. We have been entirely transparent in this. We support the notion of preserving East Point for future generations of Nahanters, and we believe the overwhelming majority of Nahant residents join with us in not wanting to

see the preserve land at East Point further developed with a 55,000 square foot building...an overwhelming majority. But, no matter what your view on Northeastern's planned expansion is, there is no question but that it is an important topic in Nahant. By submitting this CPC application, we are providing a mechanism that would allow the Town to proceed with an eminent domain taking in a way that does not affect the operating budget of the Town or result in an increase in our tax rate, and we will be taking advantage of an incredibly generous gift of private donations of \$3,000,000. We understand that eminent domain is an issue that needs to be decided by the voters of Nahant and residents will have the opportunity to vote at Town Meeting. We were elected to provide representation and leadership to Nahant. Therefore, it is our responsibility to address this important topic straight on. Procrastination and inaction is not an option. I believe this plan provides a tool to prevent development or to negotiate an acceptable resolution with Northeastern. After reading my responses to your questions and claims, I believe the voters will agree that voting to approve eminent domain will enhance both Nahant's quality of life and financial health.

As a follow-up to our request of earlier today for the BOS to delay any "Vote" on the "Second Statement of Selectmen - Preserving Eastpoint - Vote", please find below some key taxpayer concerns related to fundamental issues/details that have not been addressed by BOS as they move forward with a plan to protect East Point. **Because preserving East Point is the right thing to do, it is in the Town of Nahant's best interest, is a priority of a majority of the citizens of Nahant and because time is of the essence, the Board of Selectmen will not delay in taking the necessary actions to protect and preserve the unique wildlife habitat and open space at East Point. Any delay could result in the total loss of the East Point wildlife preserve at a cost to the taxpayers of Nahant of over \$17 million dollars (on a best case basis) over the next 40 years. It is not simply a question of whether it is worth investing a modest amount – which will not increase the citizens' taxes – to preserve East Point, even though that investment is clearly worth it. Rather, the cost-risk-benefit analysis must begin with comparing the cost of doing nothing to the cost of taking direct action for Nahant and all generations of Nahanters that follow.**

**The actual cost to the Town to take the wildlife preserve at East Point by eminent domain is small. Funding, as details in the Second Statement of**

the Board of Selectmen, will primarily be made of large private donations and CPA funding. The alternative, doing nothing, would mean the permanent loss of cherished open space, a permanent change to the character of the Town of Nahant and a burden to the taxpayers of over \$17 million for years to come. If the Town does not act now, the Town will pay for its own decimation. The Board of Selectmen will not stand idly by facing that risk. We were not elected to do nothing. The Board has spent considerable time in consultation and study with various professionals in the relevant fields to implement a plan of action to ensure an open, transparent process that will carry out the critical priority of the people of Nahant. The Board relies on professional appraisals for its projected valuation of the eminent domain taking. The Board and the Town will not be distracted or dissuaded by fear-based speculation, unsupported by any professional analyses.

On page 15, in its Conclusion of the “Second Statement - Preserving East Point as a Wildlife Preserve”, BOS says, *“While for many of Nahant residents, the issue of whether to preserve East Point transcends financial considerations. For those people, East Point is irreplaceable and its loss unfathomable. At a personal level, the Selectmen are unanimous in holding that view. We want to preserve East Point for future generations of Nahanters. We want to preserve East Point forever.”*

There is nothing wrong with public officials holding a personal view on matters that come before them. However, as public officials, they are obligated to insure they put their official duties above their personal views. **The Board members’ individual and personal views in this case are entirely consistent with the clear priorities of the citizens of Nahant and the needs of the Town. The Board is acting in its official duty according to those priorities regarding East Point and its official acts are just and right. So that we are absolutely clear here, absolutely clear...every member of the Board of Selectmen is fully aware of its responsibilities to the people of the Town of Nahant. We resent any suggestion to the contrary. This includes providing transparency and full disclosure to the people to whom they owe a fiduciary duty. On the issue the Board has been exceedingly transparent throughout the process. Indeed, the multiple public statements made by the Board have clearly presented the Board’s objectives, the process and**

included a thorough cost-benefits analysis. The Board has adhered to the public meeting laws and has acted properly and transparently to fully inform the public at each step. It also requires officials to identify and consider all issues pertinent to the decisions to be made: sometimes referred to as “due diligence”. Finally, officials are to avoid real or apparent conflicts of interest. **There are no conflicts of interest.** By doing these things, the people to whom a fiduciary duty is owed (in this case, every Nahant taxpayer!) can have confidence their interests are being protected. Officials unwilling to do so, must recuse themselves from participating in such matters. **The Board takes offense at the suggestion that any Board member is acting improperly or should recuse.** The members take their oath seriously and solemnly and are acting in the interest of the Town of Nahant. The Board represents the Town of Nahant and its taxpayers and acts in their collective best interest. There will always be some who disagree with any and every decision a Board makes. When citizens hold an opposing viewpoint, we ensure that their voices are heard. However, when there are diametrically opposing views on a particular issue, the democratic process requires that the voice of the majority carry the day. In Nahant, our Town Meeting form of government ensures direct democracy through the votes at Town Meeting.

The members of the BOS know that public officials must put official duties above personal views. You raise the question of transparency. The “Second Statement – Preserving East Point as a Wildlife Preserve” is intended precisely to provide transparency and full disclosure for every Nahanter. In short, we are doing exactly what you are requesting; fulfilling our public duty, being transparent, and providing due diligence. Your assertions that we are putting personal views above public duty, are lacking transparency, and therefore should recuse ourselves are all unfounded.

### **Critical Legal Matters Related to Transparency**

Shortly after being sworn in, Selectman Cullinan commented in a BOS Meeting that he had requested NEU, in writing, to release him as an individual Named Party to the Nahant Preservation Trust (“NPT”) lawsuits against NEU. We are not aware of any updates on the status of Selectman Cullinan’s request to NEU. Because the status bears on issues of conflict of interest, full disclosure is critical. **When Mark Cullinan was elected by an**

overwhelming majority after running on a position dedicated to the preservation of East Point, he voluntarily withdrew his complaint against Northeastern University, resigned from the Board of Nahant Preservation Trust and filed a motion to dismiss the claims brought against him by Northeastern University. Northeastern University has sued Mr. Cullinan solely because he was a signatory to a letter giving Northeastern notice pursuant to a Massachusetts Environmental Protection statute that 28 citizens of Nahant, including Mr. Cullinan, intended to protect East Point from irreparable environmental damage by initiating a lawsuit. Mr. Cullinan is no longer a party to that citizen suit. The motion to dismiss Mr. Cullinan as a defendant in Northeastern's lawsuit, however, remains pending. Due to COVID-19 related delays, the court has not yet dismissed Mr. Cullinan from that case. Mr. Cullinan also contacted the State Ethics Commission regarding this matter and was advised to file "disclosure statement" with the Town Clerk and to make a public statement regarding this matter and he did both. Regardless, Mr. Cullinan has no personal or economic stake or liability in either of the competing lawsuits and is not in conflict.

During a Conservation Preservation Committee Meeting ("CPC") (Note: the name of the Committee is the Community Preservation Committee) on or about 3/23/20, Selectman Antrim indicated the BOS decided to join the NPT litigation against NEU. In a Fin-Com Meeting on or about 5/12/20, the Town Administrator, in response to a question on the status, indicated he thought it was filed but didn't know details. Please confirm whether or not BOS, on behalf of the Town of Nahant, has intervened in the NPT lawsuit against NEU. The Town of Nahant has, through the Board of Selectmen, filed a motion to intervene in the pending lawsuit against Northeastern, and for good reason. The Town has rights unique to the Town in protecting East Point from destruction. This is so not only because the land has been dedicated to the public but also because of the destructive impact Northeastern's proposed massive development would have on Lodge Park and its intended uses. Northeastern has opposed the Town's motion to intervene in the action. The motion also remains pending. And, if so confirm, whether the Town is paying the legal fees. The Town is paying the legal fees through funds donated to the Board to cover the costs of the litigation. We are not seeking information on any legal strategy - we simply

want to confirm if BOS voted to intervene and filed to do so. The Board of Selectmen has heard the strong majority of the Town of Nahant and has taken direct actions to protect and preserve the largest unprotected open space in Nahant. The Board of Selectmen will not apologize for, or cower from, their duty to protect this invaluable, irreplaceable ecological land and cherished open recreational space.

Yes, the BOS voted to intervene and has filed to do so. We are awaiting confirmation from the court that this is allowed. Per input from legal counsel, the judges/courts take these challenges more seriously if the Town is involved. A formal gift agreement has been put in place so that legal expenses can be reimbursed by generous private donors.

If so, this has financial implications for taxpayers (additional legal expenses at a time of great financial uncertainty with our Town budget due to COVID-19). The Town is not always able to choose or control when actions are to be taken. Northeastern, as a private entity, is moving full bore ahead with its effort to raze East Point and construct a 55,000 square foot building, forever destroying the gem at the tip of Nahant that generations of Nahanters have loved. Northeastern is undeterred and will take advantage of any opportunity to move forward. The Town cannot afford to wait. It also has practical implications for any attempts to reach a negotiated settlement with NEU, including possible conflicts of interest on part of the BOS. And certainly, it has the potential to dampen any enthusiasm NEU may have had to view BOS as a party seriously interested in compromise.

Northeastern University has made it quite clear that they have no interest in compromise. They have heard the Town in meeting after meeting, in vote after vote. They have been told repeatedly and clearly that the Town wants to save East Point and are willing to work with the University to develop an acceptable alternative, but Northeastern has refused to consider the singularly important issue: relocation of the construction off Murphy Bunker and out of the wildlife meadow. At every stage, including during MEPA environmental review process, Northeastern has refused to seriously consider placement of the building anywhere but on top of Murphy Bunker. Transparency to taxpayers requires full disclosure of these issues.

The grammar is confusing here, so I am not sure what the question is. In any event, the BOS is very interested in a compromise and/or negotiated

settlement with NU. This was clearly stated in the “Second Statement – Preserving East Point as a Wildlife Preserve”. However, as publically announced during a recent BOS meeting, currently Northeastern has made it clear they are not interested in meaningful compromise. Again, there is no lack of transparency, as evidenced by open meeting discussing the CPC application, the posting of the “Second Statement” about finances, and including public posting of your letter and this reply.

### **Lack of Transparency Regarding Inherent Uncertainty Regarding Cost of Eminent Domain**

As recently explained by Town Counsel at a public Meeting – no one can predict the total cost of an eminent domain taking before the legal proceedings, including the possibility of a three-year window for NEU to appeal, are complete. A number of things factor into the length and cost of any eminent domain proceeding. Transparency and full disclosure of these critical details should be provided to taxpayers, including a worst-case scenario cost analysis. **The Board of Selectmen follows the sound, professional analyses of multiple experts in estimating the value of the property. Northeastern and its proxies, on the other hand, have a vested interest in scaring the voters away from supporting this action and use only speculation. It is true that Northeastern will have three years following the eminent domain taking to challenge the Town’s valuation, and that lawsuit may take an additional number of years to be resolved. However, based on the reliable appraisals and valuation of well-respected and experienced experts, and soon to be confirmed by additional experts, the estimated range of potential valuation of the portion to be taken is well within the Selectmen’s previous statements. In some respects, it’s like playing the lottery. It is not like playing the lottery. This process is not based on random chance or odds. It is based on sound legal analysis and appraisals by experts in the field. It is not helpful to the public for people to toss out numbers that are orders of magnitude higher with no basis or expert analysis supporting those numbers. The BOS’s CPC Application and 2nd Statement are both silent on this information, a prime example of lack of due diligence by BOS. As part of its due diligence, the Board has looked at its own Assessor’s valuation of the property as well as consulting with other**

appraisal professionals retained through counsel, keeping in mind that the property is in a Natural Resource District and is not zoned for development of any sort, commercial, residential or institutional, meaning simply, there is no underlying developmental value. That consultation aligned with the Town's assessment and preliminary confirmed the reasonableness of a value in the neighborhood of \$150,000 per acre. As explained in our Second Statement, the Board of Selectmen, again through counsel, have retained still another appraisal company to examine the value of the property. We have every reason to believe that this full appraisal will be consistent with all of the other analysis that we have looked at to this point. As such, the Board, relying entirely on experts, and not on mere speculation, anticipates the cost of taking the intended portion of East Point will not exceed the funding that we have outlined.

As we look at it, under any circumstance, eminent domain is less expensive by a significant degree than the alternative of doing nothing, with a cost to the taxpayers over the next forty years of at least \$17,000,000.00.

Nonetheless, we have not stopped exploring other options or doing further contingency planning to minimize the costs to the Nahant taxpayer now or in the future.

### **Lack of Contingency Plans, Even Though Much Uncertainty Re Proposed Financing**

In its CPC Application, the BOS did not provide any contingency plans, as requested in the Application. This means it did not address costs exceeding estimates, State CPC match money declining precipitously due to the pandemic, or projected private donations drying up. Likewise, the 2nd Statement does not include any contingency plans. **First as the community Preservation Act, the funds that the Town is projected to receive from the State as a match from the dedicated State Fund in order to pay the interest and principal on the Bond over the thirty year period of the Bond are not in jeopardy as a result of the Pandemic, or otherwise, as more fully addressed below.**

**Second, as to private donations, while the Community Preservation Committee vote makes it clear that the Borrowing will not take place unless the Town both votes to take the property by eminent domain and the Town receives \$3,000,000 in private donations, an amount twice as much as the**

Town is committing through the use of its Community Preservation Act funds, nonetheless, the Board fully expects to have a check in hand for the full amount of the gift at Town Meeting.

Again, the Board if following the science and the legal analysis, not to fear-based conjecture, in determining the just compensation owed to Northeastern upon taking the portion of the property. People seemingly forget, the cost to Nahant to do nothing, letting Northeastern charge ahead, has been determined to be over \$17 million dollars over the next forty years. Protecting East Point forever with funds not coming from taxes is a bargain compared to the \$17 million that the Nahant taxpayers would be burdened with if the project goes forward. This is true, even though BOS now knows of the reduced State CPC Match. It is true that at the onset of the pandemic the Department of Revenue notified all communities in Massachusetts to use for budget purposes a first round State match figure of 11%. That number was based on revenues collected by the State as of that time, as if the Pandemic would eliminate entirely the real estate activity and filing fees which are the source of the State matching funds for the balance of the year. That has not happened. Quite to the contrary, since the DOR's notification, filing fees have continued to run at twice the level that was raised during the same period in the prior year and we fully expect that the Department of Revenue will soon issue updated guidance significantly increasing the level of the first round match. More importantly, Nahant's State match is not limited to the amount of fund distributed to Cities and Towns in the first round. Unlike many communities, Nahant is entitled to and receives distributions from a second and thirs round of distributions from the State Fund. Historically since it adopted the Community Preservation Act in 2004, Nahant has received an average 70% State Match and in 2019 received a 59% State Match. With guidance, once again from professionals, in this case from its Bond Counsel, the Town is projecting a conservative State match of 50%. Importantly there are two other reasons why we believe the DOR notice will have little effect on the Town of Nahant, first, the State recently changed the status and more than doubled the filing fees that are the source of the dedicated State Fund from which the match is distributed each year, and secondly, as is evident from the materials prepared by Bond Counsel, the Town will not be making any payment on the bond until at least 2022, by which time any

effect of the pandemic should have abated. And, this is true, even though approximately 66.6% of proposed funding is coming from unnamed, unconfirmed private donations. As mentioned above, the Board fully expects to have a check in hand at the time of Town Meeting from the private donors. From the beginning, and even more importantly in the midst of a pandemic, every taxpayer is owed a comprehensive contingency plan for the proposed BOS financing. Another prime example of a lack of due diligence by BOS.

You have confused a few things about the CPC application.

- 1) As stated in the CPC application, the bond cannot be executed until and unless \$3M in private donations is secured. In other words, the private donations come first.
- 2) We have been assured the Nahant Preservation Trust that there will be a check for \$3 Million delivered to the Selectmen before Town Meeting. I am confident that will be the case. In the past, The Nahant Preservation Trust has raised more than \$1.5M in private donations and grants to save and restore the Valley Road School and a similar amount to save and restore the Nahant Life Saving Station.
3. The COVID-19 pandemic is not relevant since the earliest bond payment is in 2022 and the bond is for 30 years.
4. We are working on contingency plans in case total costs exceed \$4.5M and hope to have fully defined prior to Town Meeting. However as shown above, even if the experts underestimate the costs by 100% (which is virtually impossible), the town is still better off.

### **General Economic and Financial Impact of COVID-19 Seemingly Ignored**

This 2nd Statement is completely silent on the financial impact of COVID-19 as it relates to financing the BOS opposition to NEU's expansion plans, even though it is dated 6.24.20, approximately four months into an unrelenting pandemic! The pandemic does not put on hold the needs of the Town or the urgency to act to protect our dwindling open spaces. The funding mechanism we have proposed for the eminent domain process, CPA funding and private donations will not affect the operating costs of the Town, increase taxes, or be affected by the Pandemic.

It is now clear any governmental entity, business and/or personal household must factor the economic and financial impact of COVID on any financial transaction. To date, we have seen no recognition by BOS, in any information they have provided, of the impact of COVID-19 on plans to oppose NEU. **Funding of the eminent domain taking does not depend on COVID-19 impacted funding sources as discussed above. Nor could CPA funds being used for the eminent domain taking be used for operating costs and funding gaps, if any, caused by COVID-19.**

The CPC grant is for a 30 year bond, with the earliest first payment due Fiscal Year 2022. It is very simple, the BOS will not put the Town at realistic financial risk. Remember, neither the bond, nor eminent domain can be executed without 2/3 vote of approval from the Town's voters.

### **Information Regarding Significantly Reduced CPC State Match Seemingly Ignored**

Town Administrator recently indicated during a public Meeting that the State recently announced CPC State Match is predicted to be decreased to about 11%-12% due to COVID-19 financial impact to MA state budget. The 6/24/20 2nd Statement is completely silent regarding this critical decrease in a proposed funding source. **The Board of Selectmen did not include anticipated changes to the State CPA Trust Fund distribution because it has not materially affected or changed the structure of the eminent domain funding, for several reasons.**

- **As discussed above, the figure suggested to be used for budget purposes of 11% does not mean that the what Nahant receives will be capped at 11%. Nahant's State match is not limited to the amount of funds distributed to Cities and Towns in the first round. Unlike many communities, Nahant is entitled to and receives distributions from a second and third round of distributions from the State fund.**
- **The CPC has collected funds since its announcement at a level of more than twice what it had collected in the same period in 2019.**
- **Because of a change in legislation the State Fund is projected to increase from the 2019 annualized amount by more than twice.**

- Since adopting the Community Preservation Act in 2004, Nahant historically has received on average a 70% match and last year the match was 59%.
- Nahant does not start to make payment on the bond until 2022.

From discussions with other public officials and the Community Preservation Coalition, the statewide organization of Community Preservation Committees, we are confident that the State match this year will be in the range of the Town's historical matches of more than 50%. Nonetheless, the earliest possible bond payment is in 2022, so a decreased State match in 2020 due to COVID-19 is not relevant. Regardless of percentage of State match and COVID-19, the "Second Statement – Preserving East Point as a Wildlife Preserve" shows that eminent domain is a prudent financial choice for the Town of Nahant.

In summary, here is the choice before the voters of Nahant:

- 1) Spend ~\$1.7M over 30 years and save East Point as a Wildlife Preserve, safe from development forever.
- OR
- 2) Lose \$17-22M over 40 years, have a giant development, physical and financial drain on Town resources, and more traffic forever.

For me, the choice is clear.