

if The Nature Conservancy then chose to exercise its right of reverter. The Nature Conservancy has not notified the Land Trust of a violation.

In the early 1980's, the Town constructed the existing pump station and the brick building. A portion of the brick building is outside the sewer easement and on the Land Trust parcel. Thus, the brick building violates the conservation easement. Perhaps the Town believed that the sewer easement allowed the brick building but then did not do the survey work needed to determine the boundary of the sewer easement as it crosses the Land Trust (then The Nature Conservancy) parcel. In any event, the building was located where it did not have a right to be. As far as current Town staff is aware, no one brought the violation of the conservation easement to the attention of the Town before now.

Upgraded Pump Station Design

The Wright-Pierce design for the new building and associated equipment encompasses the area now occupied by the brick building and other area within the Land Trust parcel. After study, Wright-Pierce has determined that this is the only practicable location for the improvements. Among other site constraints, they found that moving the improvements to the west, i.e., over onto the Town owned parcel, would require construction of a very substantial retaining wall (if even feasible - pending a geotechnical analysis) and might impact wetlands. Thus, the Town faces the choice of eliminating the conservation easement on the Land Trust parcel (9,820 sq. ft.) or possibly abandoning the pump station upgrade.

Extinguishment of Conservation Easement and Reversionary Interest

The extinguishment (or amendment) of a conservation easement is a somewhat complicated process in Maine. The Conservation Easement Act (33 M.R.S.A. §§ 476 *et. seq.*) intentionally makes it so. If a proposed amendment of a conservation easement will materially detract from the conservation values protected by the easement then the parties, fee owner and holder, may not amend the easement without court approval of the amendment. Not only are the holder of the easement and the underlying fee owner involved in the court action, the statutes give Attorney General's Office a role in the court action.

In this case, we have the unusual situation of the Town being both the holder of the conservation easement and the entity that the wants property freed from the restrictions of the conservation easement. There is the further confounding factor: It is the Town that violated the conservation easement.

In an effort to find a path forward in these unusual and unfortunate circumstances, Attorney David Kallin of this office met in the fall of 2013 with representatives of the Land Trust and The Nature Conservancy. David had concluded that the proposal here, i.e., to eliminate the easement on the Land Trust parcel, would be considered to have a materially adverse effect on the conservation values. Consequently, he proposed to the Land Trust and The Nature Conservancy that the Land Trust convey the fee to the Town subject to the conservation easement (which would have made the Town both the owner of the land and the holder of the conservation easement) and that The Nature Conservancy release their reversionary interest for this

transaction. He proposed that the Town could then commence a Declaratory Judgment action asking the court to approve the extinguishment of the easement, which action would not need to involve the Land Trust or The Nature Conservancy.

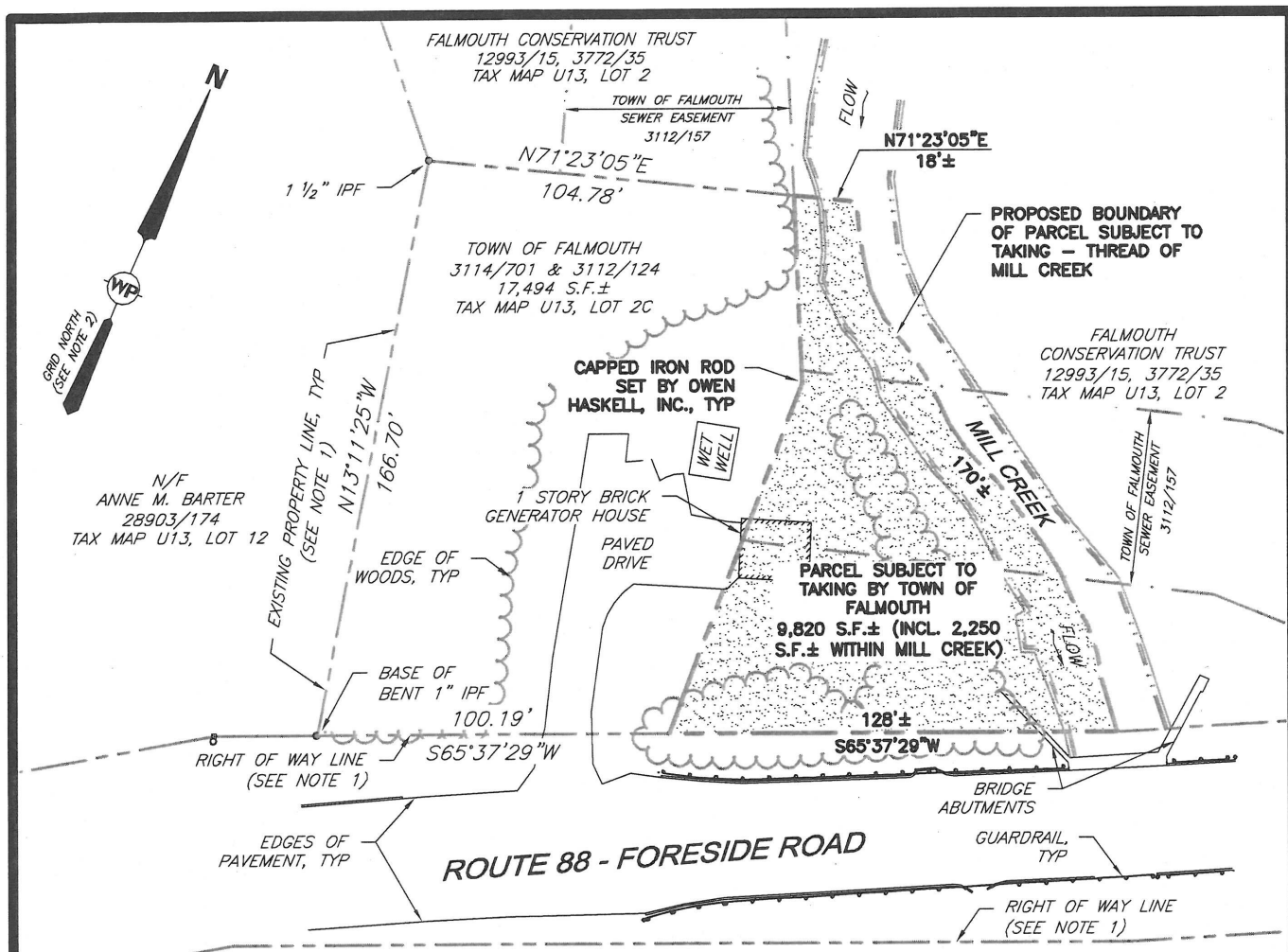
The Land Trust asked if, rather than extinguish the conservation easement, the Town would be willing to amend the conservation easement to permit the new pump station improvements, but continue to prohibit any other development. The Land Trust then proposed that it would convey the parcel to the Town subject to the amended conservation easement, and the Town would simultaneously assign the Land Trust the rights as holder of that easement. This proposal was acceptable to the Town, but under the Conservation Easement Act, it would require the same court approval process as the proposed extinguishment. This would be a “friendly” lawsuit. David would name the Land Trust and The Nature Conservancy as defendants and would seek the approval of the Attorney General’s Office. The Land Trust and The Nature Conservancy agreed to this proposal. David prepared a draft Complaint in the Declaratory Judgment action and shared it with the Land Trust and The Nature Conservancy. He also shared the draft Complaint with the Attorney General’s Office.

In the spring of 2014, there was considerable discussion with the Attorney General’s Office over the proposal to eliminate the conservation easement, including a June 2014 meeting in Augusta attended by Nathan Poore, Pete Clark, the Town’s consulting engineer and me. Ultimately, the Attorney General’s Office would not agree to the proposed Declaratory Judgment approach. The reasons for their objections are several and beyond the scope of this Memorandum. I think it fair to say that the lack of guidance in the statutes and in both Maine and national case law on the subject of eliminating or amending conservation easements led to a significant concern at the Attorney General’s Office about the precedent that might be set in this case, especially given the unusual and unfortunate facts involved here. The Attorney General’s Office has said, however, that it would not object if the Town used its power of eminent domain to “take” the Land Trust parcel and eliminate the conservation easement provided that the Town commissioned an appraisal of the property interests to be taken.

In late summer 2014, the Town commissioned an appraisal of the Land Trust parcel by Amidon Appraisal Company of Portland. The appraisal arrived at a fair market value for the fee simple interest in the pump station parcel of \$1500. The Town shared the appraisal with the Land Trust, the Attorney General’s Office and the Council.

The Council is now ready to proceed with the condemnation process.

A plan showing the pump station parcel along with photos of the site are enclosed with this Memorandum.



NOTES:

1. THE EXISTING CONDITIONS INFORMATION SHOWN ON THIS PLAN, INCLUDING BOUNDARIES AND SITE FEATURES, ARE FROM A PLAN ENTITLED BOUNDARY & TOPOGRAPHIC SURVEY, MILL CREEK PUMP STATION, ROUTE 88, FALMOUTH, MAINE, MADE FOR WRIGHT-PIERCE, 99 MAIN STREET, TOPSHAM, MAINE, DATED JULY 23, 2013, PREPARED BY OWEN HASKELL, INC., (TOWN OF FALMOUTH PLAN). THE PROPOSED BOUNDARIES AND RELATED INFORMATION PERTAINING TO THE PARCEL SUBJECT TO TAKING BY TOWN OF FALMOUTH WERE PREPARED BY WRIGHT-PIERCE.
2. BEARINGS SHOWN ARE BASED MAINE STATE PLANE COORDINATE SYSTEM, WEST ZONE, NAD 83, AS NOTED ON SAID TOWN OF FALMOUTH PLAN.
3. SEE TOWN OF FALMOUTH PLAN FOR DETAILED SITE FEATURES.
4. NO MONUMENTATION WAS SET AT THE PROPOSED BOUNDARY CORNERS SITUATED WITHIN MILL CREEK.

LEGEND

	PROPERTY LINE
	PROPOSED TAKING LINE
N/F	NOW OR FORMERLY
Tax Map U13, Lot 2C	TOWN OF FALMOUTH TAX MAP & LOT NUMBER
3114/701	DEED BOOK & PAGE FILED AT CUMBERLAND COUNTY REGISTRY OF DEEDS
S.F.	SQUARE FEET
±	MORE OR LESS
	PARCEL SUBJECT TO TAKING

CERTIFICATION

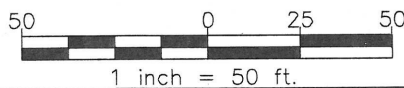
THIS PLAN IS BASED EXCLUSIVELY ON THE TOWN OF FALMOUTH PLAN REFERENCED IN NOTE 1, AND WRIGHT-PIERCE STATES THAT TO THE BEST OF OUR KNOWLEDGE, INFORMATION AND BELIEF, THE DETAILS SHOWN PERTAINING TO THE PARCEL SUBJECT TO TAKING BY TOWN OF FALMOUTH CONFORM TO THE MAINE STATE BOARD OF LICENSURE FOR PROFESSIONAL LAND SURVEYORS CURRENT STANDARDS OF PRACTICE, SUBJECT TO THE NOTES SHOWN HEREON.

DATE: _____ WRIGHT-PIERCE ROBERT C. CLUNIE, JR. PLS#1213

PLS SEAL

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GRAPHIC SCALE



CONVEYANCE EXHIBIT

TOWN OF FALMOUTH

**ROUTE 88 - FORESIDE ROAD
 FALMOUTH, MAINE**

PROJ NO: 12776A

DATE: OCTOBER 10, 2014

FIGURE:

E-1



