



To: Town Meeting Members
From: Cinda Jones

Article 43
5/29/2013

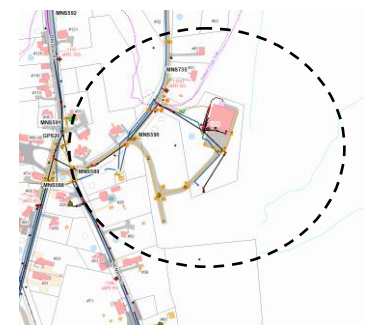
Thanks for considering carefully Article 43, a petition article asking the town to invoke the seldom-used power of Eminent Domain. Consideration of this article is very timely because the town will have an option to buy the land for its real market value (Landmark has offered \$6.5mm) under the Right of First Refusal (ROFR) provided by Massachusetts General Law Ch61. This memo will outline a few of the reasons for opposing Town Meeting Article 43, and why the town should not pursue its upcoming opportunity of ROFR.

The Town of Amherst and Cowls have a generations-long relationship and partnership based on mutual respect for conservation and development objectives. We jointly have prioritized parcels for conservation and for development. Examples of the Town and Cowls working together include Cowls providing land around Atkins Reservoir for watershed conservation; Cowls selling the town its Market Hill Road Water Treatment Plant parcel; Cowls selling an Agricultural Preservation Restriction on its Meadow Street land that was identified as a town priority for conservation; Cowls allowing miles of town recreational trails over its timberland. The Parcel targeted by Article 43 does not rank high as a conservation priority of the town, nor local land trusts. It has no Natural Heritage bubbles, endangered species, or rationale for protection other than it's a "large" contiguous parcel of forest land. Of the 600 acres Cowls owns in North Amherst, it's considered the least worthy for conservation.

Conservation Groups Will Not be Interested in this Site. The Landmark parcel is not ecologically unique; its development potential and cost to acquire are high; and its acres gained for dollars to acquire are low. Much larger tracts nearby with higher conservation value (such as Cowls' 1,300 acre Pelham Hills parcel) can be bought for comparable money as 150 developable acres in Cushman. Moreover, the list of conservation funders identified on the Save Cushman list of donors to approach are conservation partners of Cowls -- many of whom partnered in the recent protection of the Paul C. Jones Working Forest -- a 3,486 acre Conservation Restriction -- the largest parcel of land the state has ever protected. It's not in these organizations' best interests to take a comparably small parcel from Cowls against its will when it could jeopardize several already-identified, much larger and more desirable future conservation projects.

Article 43's targeted funding amount is insufficient to reach the existing fair market value set by Landmark's \$6,500,000 offer. Passing, then acting on Article 43 could put financial liability on the town.

The Town of Amherst has Actively Assisted and Planned for the Development of this Parcel. In addition to paying for the water treatment site Amherst bought from Cowls (image circled to right), the town stubbed a future subdivision road entrance and led utility hook ups to Cowls land in order to facilitate future development of this parcel. Development of this parcel has obviously been in the long term plans of the town.

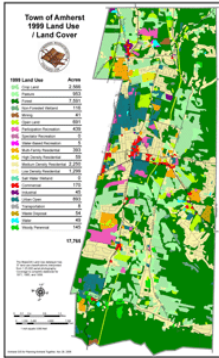


Salamander Habitat will be respected by Landmark even though Yellow Spotted Salamanders aren't threatened, nor endangered, nor legally/environmentally protected in any way. Landmark understands that the town loves its salamanders and has agreed to study and respect the integrity of salamander habitat, and build away from Henry Street.

Landmark isn't going away if this site does. If this site is taken off the table by the town or for any other reason, the Landmark project will just move to the second most desirable and viable location - Cowls' 150 acres around Cherry Hill Golf Course. The town ranks the Pulpit Hill site higher than the Cushman site as a conservation priority. Of the four large Cowls timberland parcels in North Amherst,

the Cushman site is the only one in a Village Center circle, and on town water and sewer. Of all the development options available, the Cushman Center parcel is the most reasonable.

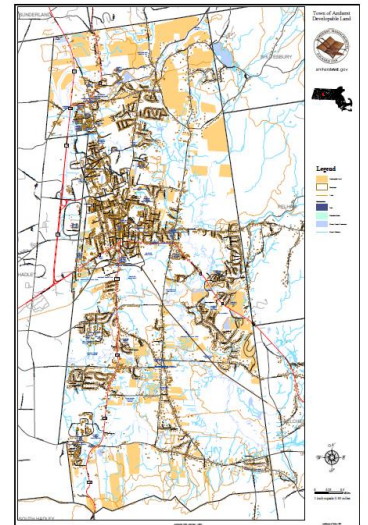
Article 43 is not legally defensible. There is a "public purpose" requirement for Eminent Domain takings. Massachusetts court cases have blocked eminent domain takings done by town meetings to block housing projects. Stopping the Retreat student housing project has been clearly expressed in video and writing as the reason for petitioners' Article 43.



Amherst already owns or has protected a third of the town. 4,849.5 acres out of 17,765 acres- 27.3% of the town is permanently protected. With all the demand we face for affordable, senior, family, and student housing, isn't it time to allow something to be built somewhere?

A huge percentage of Amherst remains forested. The master plan map to the left clearly shows in dark green all the forested land in Amherst. 7,591 out of 17,765 acres are forested – Proving, despite what project opponents claim, the Retreat parcel is absolutely not “the last forested parcel in North Amherst.”

Where can we build? The 2005 Town of Amherst map of developable land to the right demonstrates there aren't a lot of choices left. There are no “ideal” sites. All easy sites and sites in “close proximity” to UMass are already built.



Landmark's Cushman site achieves a major Master Plan goal - to push future development inside the Village Center Circles and on town Water and Sewer systems. This map shows the Retreat site is within the ¼ and ½ mile from Cushman Village Center circle targeted. It's equidistant to UMass as

Cowls Road in North Amherst, another VC site on the bus route - one where a majority of Town Meeting members feel development should occur. *Note: There is a star at the Salamander Crossing indicating this is a special place identified by people at the focus groups. Landmark respects this wish and will work to avoid this area with its development.*



In conclusion, it should be pointed out that there is conservation opportunity in development.

A conservation-minded development could be encouraged, with allowed density built on the smallest footprint possible. All undeveloped land beyond the footprint of the Retreat could be potentially donated to the town as permanently protected open space. At a time when the “Cushman Common” gathering place is growing smaller and less easy to access through traffic, this project could benefit the Community of Cushman and the town's conservation goals by providing a very large parcel of public land for recreation, gatherings, and events. The salamander area could be owned by the town and served by the Hitchcock Center for the Environment.

Please help permanently protect a majority of this parcel by enabling a smart conservation subdivision on the rest. We don't have to buy every acre to protect it permanently.

Thanks for your consideration of these points.