

**Public Values and Conservation Land:
A Case Study of the Norumbega Project, Weston, MA**

Charles J. Fausold
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Abstract

This paper explores public values and attitudes toward conservation land by tracing the history of a proposed conversion of town conservation land to water supply purposes in Weston, Massachusetts. Private citizens, local government, the regional water authority and the state legislature each placed a different value on the same 36-acre parcel of land. These values ranged from its appraised development value, to its replacement value, to its unbounded public value. A case study approach is utilized which relies extensively on personal interviews to understand the individual motivations and institutional priorities which decided the final outcome.

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Contents

Introduction	1
History	2
The Project	4
The Issues	5
The Negotiations	8
Town Meeting	9
Back to the Table	10
The Regional Scene	11
The Legislature	12
Epilogue	13
Discussion	14
Sources	17

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Introduction

A single set of tire tracks leads off into the distance. It is the only blemish on a fresh spring snowfall, yet the scene is decidedly unnatural. Arrow-straight and raised above the surrounding landscape, this is clearly not your typical New England cart path. Indeed, underneath lies one of metropolitan Boston's major lifelines—the Hultman Aqueduct, bringing over 200 million gallons of drinking water each day to 2.5 million residents in 30 cities and towns.

Just to the north of the Hultman and running roughly parallel to it is another lifeline—the Massachusetts Turnpike, carrying nearly 100,000 vehicles per day to and from the city and route 128. The sight and sound of the highway is an unrelenting presence.

Gradually the aqueduct and the highway begin to diverge, and trees and rock outcrops mercifully intercept the roar of the traffic. Stone walls hint of a more pastoral era. At the end of the path, a locked chain-link fence and huge mound of fresh earth hint that a new era is beginning.

The stone walls, the aqueduct, the highway, and the activity behind the fence are manifestations of the value of land, and how that value to society can change over time. The story of this particular parcel—now known locally as the Norumbega site—offers an unusual opportunity to explore how citizens, individually and collectively, considered and ultimately answered one central question: “What is the value of conservation land?”

To arrive at that answer, a subset of more specific questions had to be considered first: What is the value of a secure public water supply? Of scenic views? Of a heritage landscape? Is conservation value a finite, quantifiable amount, or is it only relative? This paper is a case study of how citizens in one locality—Weston, Massachusetts—thought about, studied, debated and ultimately answered these questions.

Certainly debates over whether a particular piece of land should be preserved in its natural state or developed are not new—one only has to think of John Muir and the battle to preserve what is now Yosemite National Park. However, the Norumbega story has several unusual twists that make it especially illuminating.

First, this was not a debate over whether potential conservation land should be preserved or developed for private use. That decision had been made. Public dollars had already been spent to preserve the property, part of which was owned by a nonprofit conservation organization and part by the town, and which had been jointly managed for conservation purposes for 20 years. Rather, this story is about existing conservation land proposed for another use, which would require action by the town, the state Legislature, and the

governor, a difficult hurdle to overcome. Further, the choice was not one of public vs. private benefit, but between alternative public purposes, a more difficult decision.

Second, this was not a theoretical situation. A value had to be determined, a decision made, and a deal struck, one way or another.

Third, the decision was not rushed. This story unfolded over the span of ten years, with ample time to gather information, consider options, and debate the issues.

Fourth, the decision-making process was very democratic. A broad-based citizens' committee worked for years analyzing alternative courses of action and developing recommendations. The question came before Town Meeting, one of the purest forms of local government in which all eligible voters of the town gather together to present and listen to arguments for and against a proposal and then vote on it. It also was considered and acted upon by the state Legislature. Public hearings were numerous and press coverage was extensive.

Finally, significant resources were provided to gather technical data and make it available to the public. Even more impressive was the civic capacity. The Weston citizens who played the central roles in this process were an extraordinary group. Although they differed in their opinions, sometimes sharply, they all shared several key characteristics, including long involvement in a wide variety of civic affairs, thorough knowledge of the human and natural landscape, and a strong commitment to the town. They were articulate and accomplished individuals, veterans of the public decision-making process who knew how to access and utilize information.

No public decision-making process is perfect, but this one was about as open and deliberative and informed as is possible.

History

In 1905 Arthur Wellington and his brother purchased a farm consisting of approximately 100 acres of land on either side of Wellesley Street in the southern part of Weston. Property maps of that time portray a diversified farming operation, with ploughed fields, grasslands, and swampy meadow. The eastern portion of the property, rockier and less suitable for active agriculture, is shown as a woodlot. Subsequent generations of the family would come to utilize this forestland as a refuge, a quiet place to walk and momentarily escape from the rigors and routine of farm life.

The first major change to the Wellington/Danforth property, which came to be known as Gateways Farm for the 10 white gates in the stone walls bordering its fields, came in 1938. That year the Hultman Aqueduct was completed to bring public drinking water from the Quabbin Reservoir in western Massachusetts to metropolitan Boston. The aqueduct was constructed through the northern side of Gateways Farm, requiring the

acquisition of about 10 acres of land through eminent domain, and transported water to the 205 million gallon Norumbega Reservoir in the forested area just to the east of the property. The site's relatively high elevation and location on the edge of the growing metropolitan area made it ideal for a distribution reservoir.

For the next 60 years the Hultman Aqueduct would serve as a critical link in the metropolitan water supply system, making Boston the envy of other major cities for the quantity and quality of its water.

The impact of the aqueduct on Gateways Farm was relatively minor compared to the next public infrastructure project to come through the property. For Gateways was not only located along the most direct water supply route between the Quabbin and the city, it was also located along the most direct surface transportation route between Boston and the western part of the state including Worcester, Springfield and Albany, New York. In 1954, another 18 acres of the farm was taken for construction of the Massachusetts Turnpike. The highway, elevated to maintain grade, was also located along the northern boundary of the property, roughly parallel to and just north of the aqueduct. It would have a double-barreled effect on the farm, effectively walling it off from the northern part of town, and creating a constant drone of noise. Still, the farm retained enough of its original character to be listed on the National Register of Historic Places, and today continues to produce hay and greenhouse tomatoes.

The turnpike would affect the rest of Weston as well. Beginning in the latter half of the nineteenth century the town's rural atmosphere and proximity to the city encouraged a number of wealthy Boston businessmen to establish large estates. The pike made commuting into Boston by auto very convenient and led to significant residential growth. Almost 60% of Weston's present housing stock was built in the 30 years between 1950 and 1979 (Weston Open Space and Recreation Plan, 1997). With a population of just over 11,000, Weston today remains one of the most desirable communities in the United States in which to live. The average household income in 1996 was \$166,600 (81st in the nation), and the average home is valued at nearly half a million dollars (*Worth Magazine*, June/July, 1996).

With growth in population came recognition of the need to preserve open space and rural character. In 1972 and again in 1974 Weston voters approved local funding for greenspace preservation, and town officials approached the Danforths about adding part of Gateways Farm to the town's network of conservation areas. The family was keenly interested in maintaining the integrity of the landscape and the farm's heritage, and in 1976 sold 41 acres to the town's Conservation Commission for forest and passive recreational use. Included in this transaction were the 22 wooded acres that would eventually become so hotly contested.

Around this same time the Weston Forest and Trail Association, a private, nonprofit organization established in 1955 for the purpose of maintaining open space and promoting its recreational enjoyment, acquired an adjacent 14-acre parcel. For all intents

and purposes both parcels were managed as one unit for conservation objectives. As the surrounding neighborhoods became built up the property acquired increasing importance as a buffer from the sight and sound of the turnpike.

The Project

By the late 1980s the Massachusetts Water Resources Authority (MWRA), the newly-created, semi-autonomous body established to manage metropolitan Boston's water and wastewater systems, was facing the need to make major investments in its water supply infrastructure. The Hultman Aqueduct was beginning to show its age, and since it was the only source of water for 85% of the region's residents it could not be shut down for maintenance. (The original plans for the system called for a second tunnel, but World War II intervened and the second was never built.) A new, parallel aqueduct would need to be constructed.

Another impetus was the Surface Water Treatment Rule promulgated under the 1986 Federal Safe Drinking Water Act and its 1991 amendments which requires that once treated, public water supplies must remain covered and not exposed to the elements and potential sources of contamination. Boston's water was transported in "raw" form through a system of tunnels and aqueducts to Weston, where it was treated and sent into the distribution system. To satisfy the new federal regulations, which were being enforced through a consent order issued by the state Department of Environmental Protection, the MWRA proposed to construct a new, covered reservoir at the Norumbega site as one component of a \$1.7 billion regional water system improvement program that included source protection, proper treatment and improved distribution.

The first Weston resident to learn the details of the proposed project, innocuously termed the Integrated Water Supply Program, was newly elected Selectman Joe Mullin. Mullin was serving as the town's representative on the Metrowest Growth Management Committee, a regional organization of municipalities that the MWRA was utilizing as a mechanism to keep local governments informed of the project. Preliminary indications were that the project would not affect Weston, but at a meeting early in 1990 the authority announced that plans had changed and the new tunnel and related facilities would come through the town. Mullin, who had run for office on a platform of "greatest good for the greatest number," would have ample opportunity over the next ten years to put that philosophy to the test.

The Weston Selectmen quickly realized that much of town government would need to be involved, and by summer had formed an advisory committee of representatives from town departments including the Board of Selectmen, the Conservation Commission, the Planning Board, and the Department of Public Works. The committee's initial charge was to gather and share information, assess potential impacts and develop recommendations concerning proposed project activities in the Loring Road neighborhood. The MWRA quickly embraced the idea.

A bit later, in 1991, a second group of neighbors and abutters to the Norumbega Reservoir was formed, chaired by Ed Taff. The two committees would eventually merge and become known as the Weston Working Group, and take on the responsibility of developing the principles of a negotiated Memorandum of Agreement with the MWRA.

The Issues

As details of the project became clear attention turned to developing mitigation measures necessary for minimizing the impact of construction activity on surrounding neighborhoods. The initial focus was on that part of the project in the vicinity of Loring Road, which involved construction of two new storage tanks with a combined capacity of 20 million gallons. While the taking of conservation land was avoided, concerns centered on how excavated material would be removed from the site. Removal via the new tunnel and shafts was deemed to be too costly, and an aerial conveyor belt was subsequently proposed that would lead from the construction area over the road to a loading site. Eventually this idea was abandoned in favor of a new haul road on private property and conventional dump trucks. (At this writing the Loring Road covered storage project is about 50 percent complete.)

Reaching agreement on what to do at the Norumbega site would prove to be far more difficult. Beginning with 40 alternative scenarios, the Working Group and the MWRA eventually narrowed the list to 14. The options included: building a new facility to retreat the water before it entered the distribution system; covering over the existing reservoir; building covered storage in the adjacent Schenk's Pond; and taking no action.

The MWRA's preferred alternative was to construct a completely new covered storage facility immediately adjacent to the exiting Norumbega Reservoir. The structure would cover 19 acres and hold 115 million gallons of treated drinking water. The tank would be built into the existing slope, rising 60 feet above the surrounding landscape at its highest point. It would be covered with meadow grasses, with landscaped sides. The Norumbega Reservoir would be taken off-line, and used only in emergency situations. However, the land surrounding the reservoir would be opened for public access upon project completion.

From the perspective of the planners at the MWRA the Norumbega site was the only feasible location for the project. It was located adjacent to the existing aqueduct, at the necessary elevation, and had the available land. Covered storage adjacent to the Norumbega Reservoir was, according to the agency, the least costly alternative by at least \$18 million, posed less risk to the existing water supply system during construction, and offered direct truck access from the turnpike, minimizing neighborhood disruption. The major drawback was that it required taking 36 acres of adjacent conservation land that had been acquired by the Conservation Commission and the Forest and Trail Association to be permanently preserved in its natural state. To transfer ownership of the land and change its use from conservation to water supply purposes would require a two-thirds

vote each in the Massachusetts Senate and House of Representatives and subsequent gubernatorial and agency approvals.

Although the MWRA may have decided on its preferred alternative relatively easily, it took a year or more for the Weston citizens to agree that the project as proposed was even needed. Some members felt that retreating the water with ozone or controlling the seagulls (which were a significant source of contamination to the reservoir) were viable alternatives. In their view, protecting the ecological values of the conservation land was a higher priority than protecting the view of a few abutters (which would be impacted by covering the existing reservoir or building a new treatment plant). Other members advocated attempting to get the federal government to relax its regulations or grant a waiver.

There were also concerns about the environmental impacts of the project, particularly the effects on recharge of the nearby Blaney aquifer, part of the water supply of the adjacent town of Wellesley and the focus of a zoning overlay district established in 1988. The property also contained three vernal pools, a specially protected type of wetland wildlife habitat, one of which was certified by the state's Natural Heritage and Endangered Species Program.

Everyone was greatly troubled by the prospect of taking conservation land. They reasoned that a primary motivation for landowners in preserving their land—either through donation or a legally-binding conservation easement—is the knowledge that it is an irrevocable decision: the special features of the property will be preserved for future generations. In fact the action must be permanent in order to qualify for federal tax advantages intended to encourage such charitable activity. If “permanently” protected doesn't really mean permanent, what effect would that have on future efforts to preserve important conservation land? As a legal matter the power of the government to take land for a legitimate public purpose through eminent domain is not limited, but the political hurdles involved with conservation land seemed to make that a remote possibility.

Finally, all parties empathized with the Danforth family, who had borne the brunt of public infrastructure impositions so many times before.

The pragmatists on the working group were sympathetic to these views, but they noted that the project had a very worthy goal: improving the quality and security of the public water supply of the entire region. Further, it was not as though the site was being turned into a shopping mall or subdivision. The new reservoir would be covered and vegetated, and therefore still open space, although of a different type. And since the existing reservoirs would only be needed for emergency use, public access restrictions could be eased. Finally and most significantly, since the MWRA could seek legislative authority to transfer ownership anyway, the focus should be on negotiating acceptable compensation. In the end, the pragmatists carried the day and in 1993 the Weston Working Group voted to support the covered storage option, though not unanimously.

The question of compensation quickly took center stage. What would the MWRA be willing to pay the town for acquiring the 36 acres of land at the Norumbega site?

Both parties agreed that the first step was to obtain an appraisal of the property. The town chose the firm of Avery Associates of Acton, Massachusetts, which determined that the market value of the 36-acre parcel was \$236,000. At first glance this seemed like an exceedingly low figure in a town with average property values of nearly half a million dollars per lot. But the salient facts were that:

- there was no practical access to the property, which was surrounded by the Massachusetts Turnpike, the Hultman Aqueduct, and the existing Norumbega Reservoir;
- wetlands and the aqueduct presented physical barriers to development; and, most importantly,
- as conservation land the property could not legally be developed.

The MWRA was quick to seize on the results of the appraisal. If the value of the property according to the standard of highest and best economic use is \$236,000, they said, that's what we'll pay. The agency stuck to this position for over a year.

Weston countered with a figure of about \$12 million, which was based on the cost of acquiring new conservation land elsewhere in town as well as a package of measures to mitigate the impact of the project on the town during and after construction. Clearly the two sides were far apart.

The essence of the town's position was that the appraisal did not measure the true value of the property because it assumed that development was the highest and best use and it did not consider the special public value of the property as conservation land. The town reasoned that if it were forced to give up the 36 acres, it would need to acquire other property in town that had similar public environmental and recreational values. The true value of the property therefore, and thus the amount to be compensated, was not the appraised development value, but the replacement value. This principle was especially important to the conservation commission, which had to agree first to give up the land.

It took two years of discussion, but eventually a breakthrough came in late 1995 when the MWRA agreed on the concept of replacement value. "What the town is saying and we're agreeing with is that you don't want to take conservation land without giving them an opportunity to replace it so the town can remain whole," said MWRA spokesman Tom Lindberg. The question then became, "What is the replacement value?"

The Negotiations

In late 1995 the Weston Working Group again voted to support the covered storage option, and the MWRA Board of Directors gave its unanimous approval on December 14 of that year. With the framework of an agreement in place, the parties turned their attention to preparing and seeking approval of a formal document incorporating the compensation and mitigation principles that had been agreed to during the preceding years.

Representing the authority in the negotiations were executive director Douglas McDonald and Board members John Carroll and Joseph MacRitchie from Norwood and Quincy, respectively, both urban, middle class communities without much sympathy for leafy, wealthy Weston. For Carroll and MacRitchie the need for the project was clear and the principal objective was to get it built at a minimal cost to the MWRA's ratepayers.

Weston appointed a negotiating group consisting of Selectman Mullin, Working Group co-chair Ed Taff, and Robert Brown. Taff had been a member of the working group from the beginning, and lived across the street from the existing reservoir. Brown was uniquely qualified to play a leading role in the process. A former staff director for the New England River Basins Commission, he quickly grasped the technical aspects of the proposal. As a long-time member of the Weston Planning Board he knew the land and people of the town well. Finally, as a licensed real estate broker he was intimately acquainted with property values in town.

Brown and the Weston negotiating team presented a quantitative analysis supporting the town's asking price for the property. Based on Avery Associates appraisals of other large vacant parcels in Weston they arrived at a figure of \$4.5 million for the entire 36 acres. This, they argued, is the value of the Norumbega site, not the \$236,000 appraised value. The MWRA countered with an offer of \$3 million and an exchange of 12 acres of MWRA land adjacent to another reservoir that was no longer needed for water supply purposes.

Other key elements of the compensation package for the new tunnel and covered storage construction in Weston included: improvements to the town water supply system; fire department training and equipment; measures to mitigate impacts during the construction process; free residential water hook-ups in the south side of town; and a tree replacement program. In addition, the agency would eventually allow public access to nearly 50 acres of land around the existing Norumbega Reservoir once the new covered storage facility was online. The MWRA also reluctantly granted the Town the right of first refusal if the Norumbega land is ever deemed surplus in the future and put up for sale.

Both sides ultimately agreed on the terms, with the Weston Board of Selectmen giving its approval of the memorandum of agreement on March 24, 1997 and the MWRA Board of Directors two days later. The Weston Working Group had voted 13 in favor, with three opposed and four abstentions. A variety of other public and private organizations

endorsed the agreement, including the Conservation Commission, the Weston Forest and Trail Association, the Weston Land Trust, the MetroWest Growth Management Committee, and the Charles River Watershed Association.

While the town was negotiating with the MWRA, the Weston Forest and Trail Association agreed to donate its 18 acres to the town, creating one 36-acre parcel. In addition to simplifying the real estate transaction, it also strengthened the town's negotiating position. As privately held property the Forest and Trail land was vulnerable to eminent domain action by the MWRA, a process that did not require the legislative approval needed for taking town conservation land, although it did require going to court. The organization could potentially receive no more than the \$150,000 appraised value.

Town Meeting

After agreeing on the land exchange, compensation, and mitigation measures the next significant hurdle was gaining voter approval. Article 97 of the Amendments to the Massachusetts Constitution requires that land and easements taken or acquired for parks or conservation shall not be used for other purposes or disposed of except by laws approved by a 2/3 vote of the House and Senate. The process begins at the local level with votes by the Conservation Commission and the municipal legislative body. In Weston, this meant the proposal had to go before Town Meeting. In this form of local government, all eligible voters of the town gather together and, led by a moderator, debate and vote on issues. Anyone can stand and speak for or against a particular proposal, after which a vote is taken.

Originally scheduled for spring 1996, the vote was postponed until December, and then again until May 14, 1997. During this period the various interests each did their best to present their side of the issue to the public. The MWRA provided support to the League of Women Voters to establish a publicly accessible file of technical studies and reports, fact sheets, and newspaper articles in the town library. An architectural model of the proposed project was also located in the library. Coffees, teas and public meetings were held, although only 25 people showed up for three advertised question and answer sessions.

As the date of the town meeting approached, opinions and editorials filled the weekly *Wayland/Weston Town Crier*. The *Crier* and the *Boston Globe* both endorsed the negotiated agreement, and all the town boards agreed with the selectmen in support of the deal.

At the meeting, a pivotal moment came when Nick Danforth rose to speak. He recounted how Gateways Farm had been sacrificed over the years for the public good, first for the Hultman Aqueduct and then the Massachusetts Turnpike. He reminded fellow citizens of the family's intentions in preserving the 22-acre Norumbega parcel, as expressed a few months earlier in a letter his sister, Nina Danforth, wrote to the Conservation

Commission: "...our family entrusted 22 wooded acres to the Conservation Commission...with the understanding that the woods would be kept for forest and passive recreational use ONLY. Now we face the possibility, a generation later, of watching those woods turned into concrete...We face the worst impact from construction of anyone in town. And we face something intangible as well: the loss of trust that comes when the town fails to honor its commitment to citizens to protect town land." The final vote was 365 against the project to 342 in favor, far short of the two-thirds majority needed for approval.

Afterwards, project supporters would claim that the moderator had "lost the clock," allowing opponents much more time to state their case. For their part, the opponents complained that the deal had been pushed through too quickly, and that the supporters didn't really want to hear what citizens had to say.

Though stunned, the MWRA was quick to respond. On July 9 the agency filed legislation with the Massachusetts Legislature seeking authority to take the town-owned land without local consent. Based on the principle that no compensation is needed when public purpose land is transferred to another public purpose, the bill provided no compensation at all to the town. MWRA executive director Douglas McDonald told the *Boston Globe*, "Conservation land is not something to be taken lightly. But, on the other hand, drinking water is a fairly significant community requirement, and sometimes these things have to be reconciled."

Back to the Table

The Weston Selectmen faced a dilemma. The town voters had spoken clearly: they did not want the project. Yet, as a practical matter, the ultimate decision did not lie with the town but with the Legislature. Depending on the action of that body, Weston faced the very real prospect of losing the property and receiving nothing in return, and, as a legislative action the matter was not reviewable by the courts except on constitutional grounds. Further, in early conversations with the Legislature there was very little sympathy for the town.

To complicate matters, a new person had been elected to the three-member Board of Selectmen in the spring election who was determined to do his own fact-finding about the merits of the project. Eventually he agreed with the two veterans and the board remained unanimous in support of the negotiated settlement. With the assistance of State Senator Susan Fargo the Selectmen worked hard to get the original agreement back on the table. Although a number of citizens were incensed that the board was not following the town meeting vote, some of the opposition eventually died down as the stakes became more clear, while the rest of the opposition was redirected toward the Legislature.

For its part, although it was no longer bound to honor the terms of the memorandum of agreement, the MWRA knew that it was asking a lot to expect the Legislature to overrule

a town meeting vote and, for the first time in Massachusetts history, allow a public agency to seize conservation land without local consent. The state's influential environmental community was sure to raise many of the same arguments as the opponents of the project in Weston, and a similar result was quite possible. Clearly, it was in the agency's best interest to offer a compensation package that was fair and equitable.

The selectmen and the MWRA resumed negotiations, and without too much difficulty agreed to the original terms of the deal—\$3 million and 12 acres of land in exchange for the 36 acre Norumbega parcel. This compensation was then inserted as an amendment to the bill the MWRA had filed with the Legislature.

The Regional Scene

Weston was not the only municipality dealing with the Integrated Water Supply/Quality Project. The massive tunnel/reservoir complex affected other towns including Northborough, Marlborough, Southborough, Framingham, Wayland and Natick to one degree or another. While each had its own issues, and in some cases were negotiating its own memorandum of agreement with the MWRA, the towns shared two general concerns. One had to do with interpreting the massive volume of technical information generated by the environmental impact statement process. The other involved use of MWRA water supply land which had previously been off-limits to the public. Now that the water would be transmitted entirely underground from treatment plant to end user, and surface water quality was less of a concern, what should happen to the land surrounding the MWRA's system of former storage/distribution reservoirs?

To address these issues collectively the towns formed a Project Oversight Committee under the auspices of the Metrowest Growth Management Committee. The MWRA provided funding to the organization to retain consultant expertise, and the planning firm of Beals and Thomas, Inc., with representation from the Lincoln Institute of Land Policy and O'Connor Real Estate Advisors, Inc., was hired to tackle the open space issues.

The Project Oversight Committee and the consultant team turned its attention to the question of how to value conservation land. Weston was obviously keenly interested in the issue, but other towns were as well. Southborough, for example, wanted to acquire MWRA watershed land to add to its conservation inventory. Working together, the committee and the consultant team developed a model based on determining an average price for developable land, and then adding to that a public interest value based on the unique features of the property and the town's own particular conservation priorities. When applied to an individual parcel the model could be used to derive a dollar value which a town could use as a starting point in negotiations, and it could also be used to compare parcels in terms of meeting community needs.

Applied to the Weston situation the model suggested a value of \$3.6 to \$4.5 million for the Norumbega site and \$1.2 to \$1.5 million for the 12 acres of MWRA land that was part of the deal. These results seemed to corroborate the terms agreed to by the Weston-MWRA negotiating team. (For a more detailed explanation of the model, see Brown and Fausold, *A Methodology for Valuing Town Conservation Land*, Lincoln Institute of Land Policy Working Paper, 1999).

The Legislature

With the elevation of the debate to the state level, Weston's two legislative representatives—Representative John A. Locke (R-Wellesley) and Senator Susan Fargo (D-Lincoln) assumed a more prominent role. Like the Weston Selectmen they faced a difficult political dilemma. Not only did they have to weigh the competing interests of the state as a whole versus those of their local constituents, Weston itself was sending a very mixed message. The measure had not even come close to winning the necessary support at town meeting. Yet after years of study, debate and negotiation the town's elected leadership—the Board of Selectmen and other town boards—as well as the Weston Working Group and several leading conservation organizations were solidly behind it.

Locke clearly had trouble reaching a decision. Following the town meeting vote he told the *Boston Globe*, “Whether the thing is required is something I'm not certain of. There is certainly scientific data suggesting that it may not be...I'd hate to see a situation where the town's will is overridden legislatively, and I will do all I can to avoid that.” A month later, though, he was quoted in the same paper saying, “No one here is holding water hostage for the rest of Metro Boston...If the thing is required, so be it.”

Testimony was presented during seven hours of public hearings before the Legislature's Natural Resources Committee, where many of the familiar issues were debated back and forth. Representative Pamela Resor was sympathetic to the view that conservation land should never be given up. Senator Lois Pines was concerned over the long-term effects of treatment with chlorine, one of the alternatives to the covered storage facility. Other legislators lamented the MWRA “giveaway.” Local control and the meaning of representative government were discussed at length, with the MWRA supporters arguing that the support of the Working Group and town's elected leadership was “almost as good” as a town meeting vote. Ultimately, despite fierce lobbying by project opponents and the dissenters on the Working Group, the committee voted in favor of the bill.

When the day of the scheduled vote in the full Legislature arrived, the gallery was packed with observers. During debate on the measure, all the by now familiar arguments were presented, including the need for the project and the benefits to the Boston region, the precedent of taking town conservation land, the environmental effects, and the negotiated replacement value. A moment of high drama occurred when Representative Locke rose to speak. Like Senator Fargo, he had said that he would vote against the proposal but maintain a low profile during the debate. However, to the surprise of many, his speech to

the House was a long and impassioned plea in support of home rule. Weston voters had voted against the measure, Locke told his colleagues, and the state should not overrule that action.

Locke's speech had the desired effect, and when the role was called, the electronic tally board began to light up with red lights, indicating "no" votes. House Speaker Thomas Finneran, sensing the momentum, called for a pause in the proceedings and sent his aides out to work the floor. Whatever the message those aides delivered to individual members, the red lights began to change to green and the bill passed the House by three votes (it passed overwhelmingly in the Senate).

Epilogue

As this paper is written construction is proceeding at the Norumbega site. The laborious task of drilling the new tunnel and shafts through solid granite is well underway. The Weston Working Group continues to monitor the progress of the project, while the Conservation Commission has turned its attention to the task of deciding what open space property to acquire to replace the 36 acres at Norumbega. A prime candidate is some of the remaining acreage of Gateways Farm. In a November 4, 1996 letter to the Weston Conservation Commission the Danforth family offered to sell the town a total of 22 acres, including the landmark red barn and some of the scenic open fields along Wellesley Street, a main thoroughfare for commuters. Nina Danforth told the local paper, "We've had taking after taking since 1935.... We have one voice, and that voice is quite clear. The only way we can stomach this taking is to assure some of the farm is saved."

However, consideration is also being given to other large and highly visible former estate properties that, like Gateways, are identified in the town's open space plan as having high priority for preservation. Half of the respondents to a Conservation Commission survey thought that important ecological areas should receive priority for preservation, while the other half favored protecting scenic views. This concerns those who believe that while preserving Gateways and/or other properties is desirable, such action will not replace the Norumbega piece. They argue that the town has substituted scenic views for ecological and wildlife habitat values. As Julie Danforth Hyde wrote in a League of Women Voters fact sheet, "Both goals, open fields and hidden habitats, are important, but not interchangeable."

The Danforth family is interested in selling the development rights to part of the farm to the town, but since those rights comprise almost all of the value the town would prefer to purchase the property outright. That thought makes some family members uneasy. Says Julie Danforth Hyde, "I'd have a hard time relinquishing more land to the town after this. How can we be sure that the farm won't be compromised again in another generation?" Her skepticism is not without justification, as new residents with no ties to Weston's ever more distant agricultural past move into the area. Says Hyde, "Some of the people who are building mansions willy nilly around here think of this farm as a nasty smelly place

which is downgrading the neighborhood. We who live here think it is the center of the universe.”

For those who eventually came to support the project it was a matter of weighing the pros and cons. Said Working Group chair Ed Taff, “We only lost when things got emotional.” Taff and others note that had the negotiated settlement not gone through, the town could have easily ended up with a net loss of conservation land. Working Group member Kay McCahan, who chaired the committee that wrote the town’s open space plan, agreed. “I can’t think of open space in a vacuum. I became absolutely convinced that the water quality and safety issues were paramount; that this was the only way to save the water supply of Boston and this was the only place to do it. It made the Article 97 and open space issues go way down on my list because the others were, for me, such overriding concerns. It was such a unique situation.”

As she looks back, Julie Danforth Hyde tries to rationalize her feelings. “I don’t fault my friends and colleagues in the open space constituency in this town. I think people just made a deal and tried to do the right thing, but the values that are reflected in that deal are not mine.” Though resigned to the outcome, Hyde is looking to the future with optimism. She and her husband are considering diversifying the farm operation by selling specialty crops directly to restaurants, starting a farm stand, and perhaps reviving an earlier venture into community supported agriculture.

As he looks to the future, MWRA Deputy Director Tom Powers sees increasing pressure to use open space for other public purposes. “The particularly unusual thing about our (Weston) situation was that it was the first time the Legislature overrode a town vote. But there is a lot of pressure to use open space for new schools in particular. Towns are saying, ‘It’s a whole lot cheaper to use land we have already got than buy someone else’s.’”

Discussion

During the long course of the Norumbega experience three distinct, plausible responses emerged in answer to the question, “What is the value of conservation land?” The first response, suggested by the MWRA early in the negotiations, was that the value is determined by a qualified appraisal according the property’s highest and best economic use. In the Norumbega example, that amount was \$236,000.

A second response, at the other end of the spectrum, was that the value of conservation land is limitless. A majority of Weston voters believed that the qualities of the Norumbega site as recreation land, wildlife habitat, aquifer recharge, heritage landscape and scenic view were so important that they should not be given up at any price.

A third response was that the value is equal to replacement cost—what it would take to acquire or otherwise permanently protect a similar amount of property with similar

environmental features in the same proximity. In the Weston example this turned out to be \$3 million plus 12 acres of land valued at approximately \$1.5 million, for a total of \$4.5 million. Ultimately, this is the value that was agreed upon by the Weston Selectmen, the MWRA, and the Massachusetts Legislature.

What lessons may be drawn from the Norumbega project?

First of all, the standard of highest and best economic use is inadequate for measuring the value of conservation land because it does not consider the public interests which are inherent in that kind of property.

Second, those public interests, though not commonly traded in markets, are tangible and real. Weston voters rejected the terms of the Norumbega deal negotiated with the MWRA knowing full well that by doing so they jeopardized the town's chances of receiving any significant compensation at all for the property. In essence, this small town of about 11,000 residents was willing to risk over four million dollars just to send the message that conservation land is not for sale. Some part of this message was that an agreement between a local government and a landowner to permanently protect conservation land is a sacred trust, eminent domain notwithstanding.

Third, if that trust is to be subsequently breached the burden of proof is very high. It seems clear that if the MWRA had not been able to demonstrate a very significant public health benefit to millions of people, and that for reasons of geography, engineering and federal and state law there were no viable alternatives, the agency would have been forced to take some other approach. Similarly, had the Norumbega site contained some unique environmental feature other than the small vernal pool, or had Norumbega been one of the last undeveloped pieces of land in Weston, it is quite likely that it would have been enough to tip the vote in the Legislature the other way.

Fourth, it is critically important that a town have a clear rationale why it owns conservation land. Weston's negotiating position with the MWRA was aided immeasurably by the fact that it already had in place a comprehensive and carefully prepared open space and recreation plan. The plan made it possible to document the importance of the Norumbega site to the town, and it has also provided a basis for examining potential replacement sites that possess the same or similar conservation attributes.

Finally, process is important, and process takes time. There are those who may disagree with the ultimate outcome of the Norumbega project, but it is hard to fault the method of decision-making. The Weston Selectmen deserve credit for creating an open and inclusive process for gathering information and obtaining citizen input. The Weston Working Group included highly capable people of diverse views who worked very hard and served their fellow citizens well. The Massachusetts Water Resources Authority should be commended for its emphasis, backed up by considerable funding, on citizen participation and providing information on the project to the public. It also showed

patience in the face of looming consent order deadlines. The Weston Working Group discussions, public hearings, town meeting vote and the vote in the Legislature provided ample opportunity for everyone affected by the project to understand the issues and express their opinions.

It is of course quite possible if not probable that under different circumstances the question “What is the value of conservation land?” would be answered differently. However, it is hoped that Weston’s experience with the Norumbega project as presented in this case study will not only help other communities to more fully appreciate their conservation land, but also provide a model for the even more difficult task of considering and reconciling public interests in land generally.

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