

## Donna Nashawaty

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**From:** Jae Whitelaw <jae@mitchellmunigroup.com>  
**Sent:** Monday, February 10, 2014 2:23 PM  
**To:** Donna Nashawaty  
**Subject:** Abbott Library Building

Donna –

I am writing in response to your inquiry as to the possible uses of the Abbott Library Building that the library will be moving out of later this year, and the procedures required to institute those possible uses. As you know, a significant portion of the initial building funds were bequeathed to the town by Martha H. Abbott for the purpose of “erection of a library building in said Village.” It is this purpose which we must keep in mind as we discuss the options. For purposes of this discussion, we will assume that the library is entitled to 75% of the value of the library and the town to 25%.

First, I concur with your thought that the library trustees are no longer authorized to manage and control the Abbott Library building once the “library” moves over to the new building and the Abbott is no longer used as a library. The building becomes “regular” town property, subject to the restrictions on use as a library. This means that the selectmen, not the trustees, may determine the building’s future; until the move, the trustees do so.

The portion of the library building/property that is attributable to the monies from Mrs. Abbott and other donations/gifts dedicated to building a library building constitute a trust on the property. Any change in use of the property or proceeds from a sale will require approval from the Charitable Funds Division of the AG’s office, i.e. Terry Knowles, and possibly a cy pres action to change the purpose of the building/use of proceeds. ALL of the options discussed below will require the AG’s approval, and some may require a probate court cy pres action. In addition, the state will have to approve the 75/25 split we are assuming, which means we will have to provide the back-up documentation to support that percentage allocation even if both the trustees and the selectmen agree.

Let’s look at some options for both before and after the library moves to the new location:

### **Before the Move:**

Sale of the property: Trustees ask the voters for approval to sell the building, with the proceeds to be distributed between the town and the library trustees. If the trustees are not going to use the proceeds to construct the new library, Terry may require cy pres.

Rent of property: Trustees do not the authority to lease out the property for non-library purposes – to do so would put the library take the library out of their scope of authority and into the selectmen’s authority.

Sale of library’s interest in the property to the town: Trustees ask the voters for approval to sell the building to the town for \$x representing the library’s share of the building. If the trustees are not going to use the proceeds to construct the new library, Terry may require cy pres.

### **After the Move:**

Sale of the property: Selectmen go to town meeting for voters to approve sale subject to the percentage of the purchase price that must be paid to the trustees. If the trustees are not going to use the proceeds to construct the new library, Terry may require cy pres.

Lease of property: Selectmen can lease out the space. This should only occur after the town has purchased the library interest with the approval of the AG's office and if necessary, court approval of the cy pres action unless the court has approved the town's request to lease out the property and approved the split, if any, of the net rent with the trustees prior to final action on the cy pres petition.

Sale of the library's interest to the town: Selectmen go to town meeting to raise and appropriate funds to buy out the trustees. If the trustees are not going to use the proceeds to construct the new library, Terry may require cy pres.

I believe this addresses various scenarios and issues we discussed. Please let me know if you have further questions. Thank you.

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