

EAST LYME BOARD OF SELECTMEN

MEETING OF SEPTEMBER 2, 2015

MINUTES

FILED IN EAST LYME
CONNECTICUT

Sept 3 2015 AT 2:05 AM/PM
Allen Palermo
EAST LYME TOWN CLERK

PRESENT: Mark Nickerson, Kevin Seery, Marc Salerno, Holly Cheeseman, Rose Ann Hardy
Rob Wilson.

ALSO PRESENT: Attorney O'Connell, Finance Director Anna Johnson, Director of Public Works Bragaw
Deputy Director of PW Bill Scheer, Town Planner Gary Goeschel, Emergency Mgt.
Director Dick Morris.

1a. Mr. Nickerson called the meeting to order at 7:30 p.m. and led the Pledge.

1b. Additional Agenda & Consent Calendar Items

There were none.

1c. Delegations

Mr. Bialowans of 61 Walnut Hill Road was present and read Attachment A into the record.

1d. Approval of Minutes, Meeting of August 5, 2015

MOTION (1}

Mr. Seery moved to approve the minutes of the regular meeting of August 5, 2015 as submitted.

Seconded by Ms. Hardy. Motion passed 6-0.

1e. Consent Calendar

MOTION (2)

Mr. Seery moved to approve the Consent Calendar for the meeting of September 2, 2015 in the amount of \$3907.41.

Seconded by Mr. Salerno. Motion passed 6-0.

2a. Special Appropriation –\$26,630 CNRE Fund 32 - Bd of Ed – Dugout Project

Superintendent of Schools Jeff Newton was present and noted that this appropriation is for the Framing/Roofing and the Masonry work to re-build the ELHS Dugouts. The projected cost to rebuild the ELHS Dugouts is \$33,360. To date, \$7,000 from the FYE June 2015 budget was used to pour the concrete slabs, the balance of \$26,360 is needed for the Masonry work in the amount of \$12,160, and the Framing/Roof work in the amount of \$14,200. He added that at its meeting of Monday, August 10, 2015, the Board of Education voted “to approve the completion of the ELHS Dugouts in the amount of \$26,360 and requests the Board of Selectmen, Town of East Lyme, establish a Special Appropriation for the FY 2015-2016 ELHS Dugout Capital Improvement Project.”

Ms. Cheeseman inquired about the time frame for the project.

Mr. Newton stated that the dugouts would be completed before the winter sets in.

Ms. Hardy noted that the Board of Education had approved advertising on the baseball fields and asked if any income had been generated.

Mr. Newton responded not as yet.

MOTION (3)

Mr. Seery moved the following resolution:

WHEREAS, the Board of Selectmen upon the recommendation of the Board of Education has determined that a true and very real need exists for the completion of the East Lyme High School Dugouts consistent with the 2015/16 Capital Improvement Plan.

BE IT RESOLVED, to approve a special appropriation to the Board of Education in the amount of \$26,630 in CNRE Fund 32 for the purpose of the framing/Roofing and Masonry work for rebuild the ELHS Dugouts and forward to the Board of Finance for approval. The source of funds will be \$26,630 from LEARN Rental Fees.

(Note: a Town Meeting is required)

Seconded by Mr. Wilson. Motion passed 6-0.

2b. Special Appropriation – \$49,785 DEEP Recreational Trails Grant

Town Planner Goeschel noted that the Department of Energy and Environmental Protection has awarded the Town of East Lyme \$49,785 grant to extend and maintain the above referenced trail. Maintenance along the 12-mile trail includes constructing new parking areas at Grassy Hill Road, Darrow Pond, and Whistletown Road trail head locations, trailside kiosks, and trail maintenance/renovation and minor trail development. The Town will be matching this grant award with in-kind services at 20% municipal contribution of \$12,785.

Ms. Hardy inquired what surface would be covering the parking areas.

Mr. Goeschel responded gravel.

Ms. Hardy noted that she was anxious not to have any more paved areas and hoped that there would be minimum disturbance. She also noted that the Whistletown Road Parking Lot was not listed under project tasks #4.

MOTION (4)

Mr. Seery moved to approve a special appropriation in the amount of \$49,785 in CNRE Fund 32 to revenue and budget accounts to be established titled, "Niantic 8-Mile River Watershed Trail" for the Department of Energy and Environmental Protection's Recreation Trails Program Grant award and forward to the Board of Finance for approval. (Town Meeting approval is necessary).

Seconded by Mr. Salerno. Motion passed 6-0.

2c. Special Appropriation \$23,229 Purchase and Install 911 Phone System

Director of Emergency Management Dick Morris noted that the current software and equipment that **was** utilized through AT&T does not meet the demand utilized by the Department of Emergency Management and Public Safety. Additionally, this new phone system will also greatly enhance communication capabilities with the town hall. He added that the Office of East Lyme Emergency Management is requesting a special appropriation in the amount of **\$23,229** to cover the cost of the new enhanced 911 phone system. **\$6,832** of the requested amount will be covered by the 15/16 Nuclear Safety Emergency Preparedness Grant (NSEP), allocation # **2016-56**. Additional monies have been awarded by the Emergency Management Performance Grant (EMPG) sub-grant award 014E045A in the amount of **\$9,446**. Remaining funds to come from CNRE Fund 32 account 32-70-300-500-100 (Town Project Allocations).

Ms. Cheeseman inquired if this was another unfunded state mandate.

Mr. Morris noted that it was and added that he was confident that this change would be adequate for the future.

MOTION (5)

Mr. Seery moved to approve a special appropriation to CNRE Fund 32 in the amount of \$23,229 to cover the cost of purchase and installation of a new, enhanced 911 phone system and forward to the Board of Finance for approval. This is to include an account to be established titled, "Enhanced 911 Phone System" in CNRE Fund 32 with corresponding revenue accounts for sources of funds \$6,832 NSEP Grant and \$9,446 EMPG Grant. In addition, a transfer from CNRE Fund 32 account 32-70-300-500-100 in the amount of \$6,951.

Note: (This will require a Town Meeting)

Seconded by Mr. Wilson. Motion passed 6-0.

2d. Special Appropriation \$98,071 – purchase of Harbor Master Boat

Director of Emergency Management Dick Morris noted that the Office of East Lyme Emergency Management is requesting a special appropriation in the amount of **\$98,071** to purchase a new Harbor Master boat. A FEMA Port Security Grant has been awarded to the Town of East Lyme to purchase this vessel. Seventy five percent (75% = \$73,553) of the total cost of this boat and all of its required accessories, will be covered by this FEMA Port Security Grant. The remaining 25% Non-Federal amount will be shared by the Town of Waterford and the Town of East Lyme. The Town of Waterford will pay \$12,000 to the Town of East Lyme for their share. The remainder of \$12,518 is to be paid by the Town of East Lyme. He added that this new boat will be jointly shared with the Waterford Harbor Master and will also be available for use by other Town of East Lyme Departments such as Parks & Recreation to assist them with the annual triathlon, inspection, installation and removal of swim lines, as well as to the Police and Fire Departments to assist in patrol & emergency situations which may include assisting the regional dive team. This new boat will be replacing a 23' Parker Cutty Cabin that currently requires approximately \$7,000 in repairs to make operational which is owned by the Town of Waterford. This new boat is safer for the Harbor Master to inspect moorings without leaving the helm. It also allows access to shallow water, especially in the Niantic River where areas are silted in and are becoming very shallow and unnavigable by the current vessel. He said that we propose to sell the 24' Grady White that is currently

the spare Police Patrol Boat. It is 20 years old. We will reimburse the town-wide projects in CNRE with the proceeds.

Mr. Nickerson noted that we are not adding assets to the river with this appropriation.

Ms. Cheeseman inquired how often the boat is in use.

Mr. Morris replied at least once a week.

Ms. Cheeseman inquired where this boat would be stored in the winter.

Mr. Morris responded either in Waterford or at the old garage.

MOTION (6)

Mr. Seery moved to approve a special appropriation in the amount of **\$98,071** to CNRE Fund 32 to purchase a new Town of East Lyme / Town of Waterford shared Harbor Master Boat and create an account for such purpose and forward to the Board of Finance for approval. Source of funds \$73,553 FEMA Port Security Grant, \$12,000 Town of Waterford contribution and \$12,518 Town of East Lyme Contribution from CNRE Fund 32 account 32-70-300-500-999 (Town-wide Projects). Once the existing 24' Grady White Police Boat has been sold, the Town-wide project funds will be reimbursed with same.

(Note: A Town Meeting is Required)

Seconded by Mr. Salerno. Motion passed 6-0.

2e. Public Works Review of Roxbury Road / Capital Drive Sites

Director of Public Works Joe Bragaw reviewed the following plans with the Board:

8 Roxbury Rd

1. Demo the building on the right (this will take an abatement survey and the cost of demo – we will have to budget for this)
2. Remove the pavement from the building on the right all the way to Romagna Rd, level the area, loam and seed to create a green space buffer
3. Remove the northern entrance to Romagna Rd
4. Relocate the free sand/salt pile to the southeasterly corner of the facility out of site
5. Move the existing grey container to behind the salt shed (we would need to clear some stuff out and level the area but I think it would work – see attached photo #5)
6. Reroof the salt shed if it is determined that we can use it for storage without corroding the equipment
7. Paint the P&R storage facility (maybe we can get the prisoners to help with this)
8. Relocate the mafia blocks in the front of the property to the FSB new lay down area
9. Relocate the sand pile to the FSB new lay down area, grade that area, loam and seed the hill
10. Sewer would like to use the top floor area in the P&R building that is currently being used by the Children's Museum (this would have to be discussed with the Museum)

12 Roxbury Rd

1. Continue to cut the large hill on a semi-regular basis
2. Remove the existing fueling area and install new above ground storage tank around the corner
3. Install some vegetative screening between Roxbury Rd and the new fueling area to limit the view to this area. The screening would have to be set back far enough so that it would not cause any sightline issues coming out of the Roxbury facility.
4. The Police boat that is shrink wrapped in the far corner needs to leave the site
5. The steel container on the west side of the facility should be relocated to a space not visible from the road (maybe behind the salt shed)
6. Either get rid of the old bus depot little building or find another place for it out of site from Roxbury Rd

He said that he was now making the cleanup of this area a priority and would try to add green areas and remove the old building and paint the other. He added that he wanted to keep the existing salt shed at Roxbury Road noting that it needs re-roofing, but would prove helpful for equipment storage.

Ms. Hardy noted that she had reviewed this area in early summer and was shocked at how deplorable the area was. She noted that she had noticed recently that some work had been done to attempt to clean up the area but more was needed.

Mr. Bragaw noted the plans for the Capital Drive area and added that the next item which is a request to combine the lots would enable them to carry out their plans for this location.

2f. Resolution to Combine Lots – Capital Drive Area

Deputy Director Bill Scheer noted that the current field services building at 8 Capitol Drive was purchased with two vacant lots to the north to accommodate the construction of a new salt dome and a new fueling station. The proposed salt dome will hold up to 2,895 tons of salt which is approximately one year's worth of salt. Our current shed holds approximately 1,100 tons. This will greatly improve our storm preparedness in the future as there have been many statewide salt shortages during recent bad winters. He added that the underground fuel storage tanks located at the old Town Garage at 8 Roxbury Road are near the end of their 30 year life expectancy and are scheduled to be removed within the next two years. New 6,000 gallon above-ground gasoline and diesel tanks are proposed to be installed at the new field services building which is the main base of public works operations. This will allow vehicles to be fueled where they are stored and allow oversight from the public works staff in the adjacent building. An above-ground diesel tank is proposed at the old Town Garage to service the school buses and Public Works and Water and Sewer vehicles that are based in the vicinity. Having the school buses drive to Capitol Drive to fuel-up from their current storage location is not economical. He said that these three lots must be combined in order to meet the zoning setback and buffer requirements for the proposed site improvements.

MOTION (7)

Mr. Seery moved the following resolution:

WHEREAS the Town is the owner of real property known as 6 Capital Drive, 8 Capital Drive, and 11 Colton Road, which are currently individual parcels ("parcels").

WHEREAS the combining of the 3 parcels into a single parcel of land will facilitate the development of the intended use.

IT IS RESOLVED that the East Lyme Board of Selectman hereby authorizes the First Selectman to execute deeds and related documents in order to combine 6 Capital Drive, 8 Capital Drive, and 11 Colton Road into a single parcel of land.

Seconded by Mr. Salerno. Motion passed 6-0.

2f1. Consideration for Formation of Samuel Smith House Commission

Mr. Nickerson noted that he had added this item to the agenda to discuss with the Board options for the Samuel Smith House. He said that when the Town agreed to purchase the property they received a grant from the state which says that the Town is responsible for the upkeep of this property and also responsible to bring this property up to museum quality standards. He said the group shepherding this house is very dedicated, but we are now receiving a second request for funding. He reviewed Attachment C. with the Board. He noted that there is no budget line for this resource, since when discussing the purchase they had pledged that no town funding would be required. He added that this fact might have been the actual tipping point for the Town to purchase the property. He said if the Town is to give money for the workings of this house, they should be a commission of the Town and they would receive a yearly budget and there would be accountability.

Mr. Seery agreed noting that this is now a town resource and must be maintained. He added if town funding is required, a commission should be set up so that then they could report back to the town.

Ms. Hardy noted that Mr. Schutt stated in his 8/25/15 (Attachment C.) letter that "the town has owned the property for more than 2 years and in that time no preservation work had been done". She added that she thought there had been work done on the roof. She added that there is no lease presently. If this group signs a lease then they are responsible for insurance and all costs because they become the caretakers of the property.

Attorney O'Connell noted that the Town Charter allows the Board of Selectmen to create a new Board or Commission by creating an ordinance and hosting a public hearing. He said if this were accomplished, they would be an agency of the Town with a budget and this would offer accountability. He said that an Ad Hoc Committee would have no funding and they would only advise the Board of Selectmen on a limited charge.

Ms. Cheeseman inquired what would be the purpose of an Ad Hoc Committee.

Attorney O'Connell responded they would study the problems and come up with an idea of how to proceed. He said the Town can assign to another governmental body the maintenance of this building.

Mr. Wilson noted that he thought there would be the need to form a new commission from the very beginning. He suggested assigning the Town Building Committee to monitor the Samuel Smith House.

Attorney O'Connell noted that per Charter, the Town Building Committee has purview over new buildings and additions. There would need to be an ordinance change if the Board wanted them to be involved with the Samuel Smith House.

Ms. Cheeseman noted that if we give money there has to be accountability.

Mr. Seery stated that before we make any appropriation, we need to know the complete status of what is necessary now and what will be needed in the next few years.

Mr. Nickerson suggested tabling this item until the next meeting for more discussion.

2g. Sign Call – Special Town Meeting

MOTION (8)

Mr. Seery moved the following:

TOWN OF EAST LYME

NOTICE OF SPECIAL TOWN MEETING

Notice is hereby given of a Special Town Meeting to be held on Wednesday September 16, 2015 at the East Lyme Town Hall Upper Meeting Room at 7:00 p.m. to consider and take action on the following:

1. Special Appropriation \$26,360 CNRE Fund 32 – Bd of Ed. – Dugout Project
2. Special Appropriation \$49,785 DEEP Recreational Trails Grant
3. Special Appropriation \$23, 229 Purchase and Install New 911 Phone System
4. Special Appropriation \$98,071 Purchase of new Harbor Master Boat

Dated at East Lyme, CT this 2nd day of September, 2015

EAST LYME BOARD OF SELECTMEN

Seconded by Ms. Hardy. Motion passed 6-0.

2h. Appointments

SCWA (2)

MOTION (9)

Mr. Seery moved to appoint Mark C. Nickerson of 15 Jean Drive, East Lyme, CT and Carol Russell of 4 Bramble Bush Drive, Niantic, CT to serve as a member of the SE CT Water Authority through September 1, 2017.

Seconded by Ms. Cheeseman. Motion passed 6-0.

MOTION (10)

Mr. Seery moved to appoint J. David Jacques of 1 Red Fox Road, East Lyme, CT to serve on the Water and Sewer Commission through January 4, 2016.

Mr. Nickerson introduced Mr. Jacques.

Seconded by Mr. Salerno. Motion passed 6-0.

5a. Ex-Officio

Mr. Wilson had no report.

Ms. Cheeseman attended the Zoning Commission meeting where the Landmark application was approved with conditions. She attended the August 24th Board of Education meeting where they had a great deal of discussion before approving a one year contract for the Chinese Student Exchange Program.

Mr. Seery had no report. He noted that Jim Weekley (a long time police officer for East Lyme) had passed away today.

Ms. Hardy said she had attended two planning meetings and she will offer an update at our next meeting.

Mr. Salerno noted that the Harbor Management meeting was cancelled. He added that he had talked to Superintendent of Schools Newton and been invited to join the steering committee meetings for the Elementary Schools.

5b. First Selectman's Report

Mr. Nickerson noted that he was pushing sewerage Saunders Point. They had contacted the State several times asking them what had to be done with no answer. He told the Water and Sewer Commission to move forward and we are now getting close to a town study. He added that sewers were approved for Park Place and they will be paid for by the developer.

He attended a retirement party for Detective Don Marr at Camp Niantic, noting it was a great send off. He also attended an ice cream party for Elias Perkins a 50 year employee of the Town and noted he had just retired. He attended the 25th Silver Anniversary of the Senior Center.

Mr. Nickerson said that he attended a SEAT meeting regarding a bus service press release and added that the East Lyme runs are in question and if we keep them, the rates will double. He also attended a regional management meeting with Dick Morris.

He noted that there was \$45,000 set aside for a study on what we will do with the school that is being returned to us and noted that we need to have a plan.

He reviewed several upcoming events:

- dental and flu clinic
- movies in the Park (McCooks) on Friday night through September.
- Car Show on Labor Day night at the VFW.
- VFW roast beef dinner.

He commented on a petition that had been received about the electronic sign that the Zoning Commission had approved. He noted that the sign would not be flashing and it would be on the far corner of Town Hall grounds toward downtown. He added that this will be on the agenda for next meeting.

Mr. Salerno commended Mr. Nickerson and Mr. Bragaw for doing something about Roxbury Road.

6.Public Discussion

Luanne Lange of the Historical Properties Committee said that she had contacted 16 different towns and inquired about their leases, MOA's and commissions.

Marvin Schutt thanked the Board for inviting them to hear the Board's thoughts.

MOTION (11)

Mr. Wilson moved to adjourn the September 2, 2015 meeting of the East Lyme Board of Selectmen at 9:57 p.m.

Seconded by Ms. Cheeseman. Motion passed 6-0.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Darlene C. Stevens". The signature is written in dark ink and is positioned above the typed name.

Darlene C. Stevens, Recording Secretary

Attachment A

September 2, 2015

Good Evening Mr. Nickerson and Other Board Members:

My name is John Bialowans of 61 Walnut Hill Road. My first question is for the 1st Selectman to answer a question that has arisen within the past week. This should be very easy for Mr. Nickerson to answer because he had dealt with insurance for a while. Since he owns and is an agent of an insurance company the question is: How does a company give or process to a person a Certificate of Liability Insurance?

I have asked quite a few construction companies, insurance agents around here, other towns, and even another state this question and they all said the same answer. Call your insurance company or agent and have them put your name on their policy to do work on your property. I have sent an email to various people in this town and elsewhere (August 29, 2015) about the conditions that I have to sign, notarize and return to Centerplan before we can get a Certificate of Liability Insurance. They have altered their property so much, their retention ponds have failed twice already, and have damaged our tributary, Cranberry Brook, Latimer Brook, and the Sound – and the Town is doing nothing about it.... The mediator, Gary Groeschal, that was appointed by the Town (that we objected to because of a conflict of interest) only can do what he was told to do by the previous First Selectman. It's a shame that politics is involved, and you know what that does blank, blank and blank. It's in every level in our government in this Country, and a lot of people are getting sick of it, and saying "get them out and start fresh."

Getting back to the mediator, I called him up on Monday August 31, 2015 and he gave me the usual answer "it's a civil matter". Being a mediator in a matter between two parties, he is the judge, referee and umpire. He should be able to answer and resolve a situation or matter that has arisen when one of the parties does something that wasn't agreed upon.

Centerplans' Attorney Ted Harris said at the June 8, 2015 Wetlands meeting, and I quote "they would provide a Certificate of Liability Insurance as any contractor does" end of quote. Attorney Harris didn't say it once - he said it twice at that meeting. Attorney Harris not once did he say there are conditions that have to be signed, notarized and returned to Centerplan before a Certificate of Liability Insurance is given. It looks like Centerplan broke our mediation agreement, and their attorneys remarks and promises, so I guess we will start again with the process of getting attorneys involved, and a new agreement in place.

I'm ready again because it's sad how this Town government does not protect the tax payers' interest, of this town, for their rights and damages to the wetlands and watercourses in this Town. Other Towns in the area of New London County and beyond must be having a good laugh now seeing how this was handled with Centerplan. Who is to blame for this? Is it the tax payer or our blank?

I'm not going away as you can see. This is a Town meeting and as a tax payer we have the right to talk at every meeting, and at every commission meeting, that they have.

Also, I would like to know if it's true.....there is a rumor going around town that Landino is going to do another project in this town. I feel sorry for the neighbors around this project. God help them. Also I heard awhile back that Norwich (and just read it) is looking into solar projects being built. Norwich, Groton and Bozrah would need East Lyme's experience in dealing with the Siting Counsel. I hope this land doesn't have wetlands on it or they have to alter their property, and sell everything off of the land. I wonder if Norwich, Groton or Bozrah will stand behind their tax payers like the previous administration should have in this town. I hope the current administration might protect the tax payer.

I will be back at the next Selectman's meeting to make more comments.

Thank you,

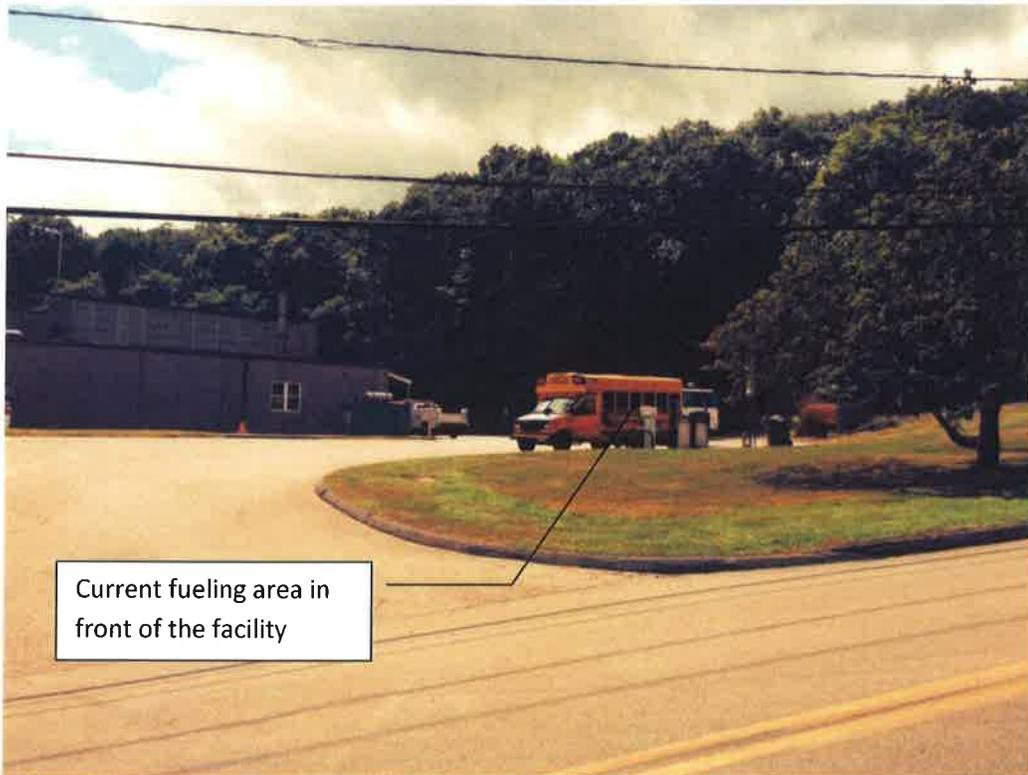
John Bialowans



12 Roxbury Facility (Eastern Side)



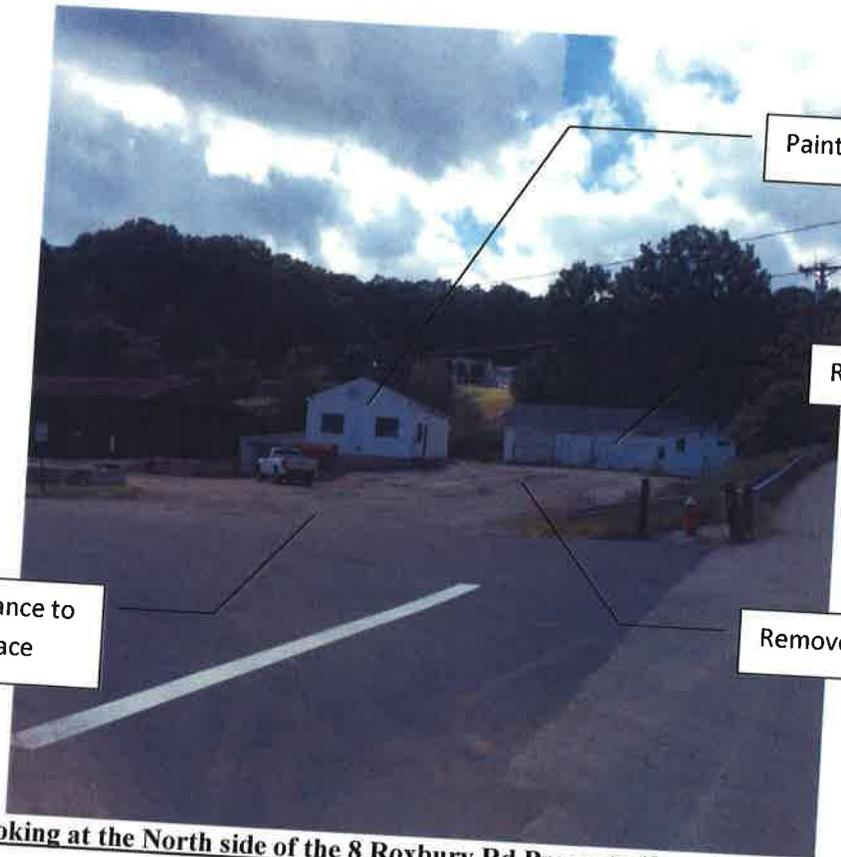
12 Roxbury Facility (Eastern Slope)



12 Roxbury Facility (Western Side)



12 Roxbury Facility (Proposed Area for Above Ground Diesel Fueling Area)



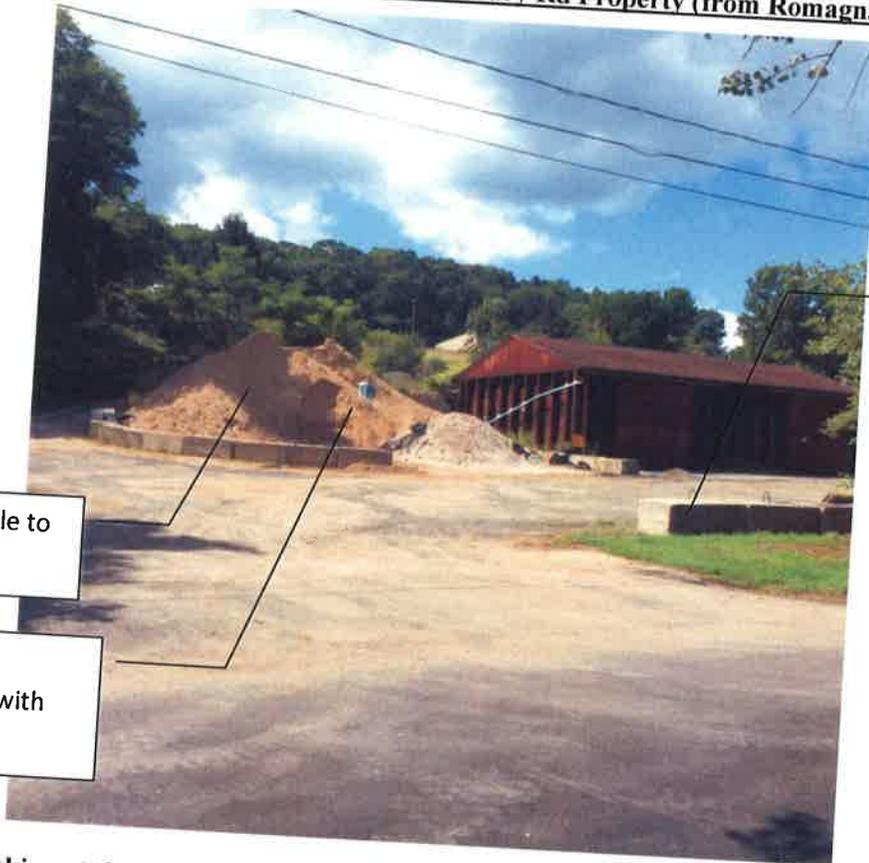
Paint building

Remove Building

Close in this entrance to create a green space

Remove Pavement

Looking at the North side of the 8 Roxbury Rd Property (from Romagna Rd)

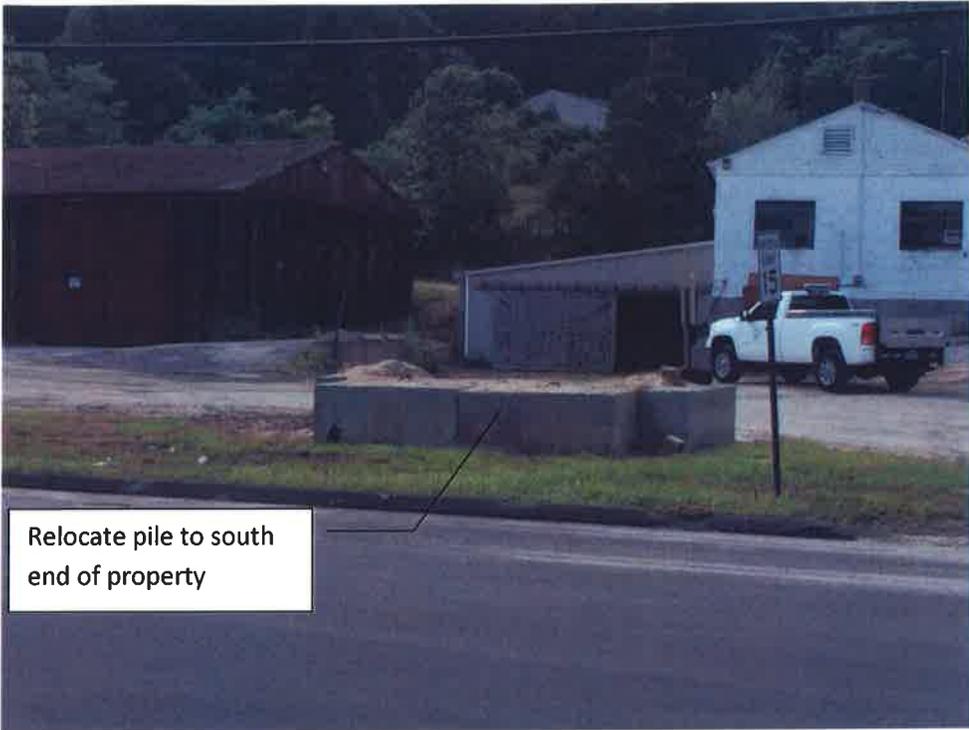


Move barriers to 8 Capitol Dr

Move sand pile to 8 Capitol Dr

Clean up embankment with green space

Looking at the South Side of the 8 Roxbury Rd Property (from Romagna Rd)



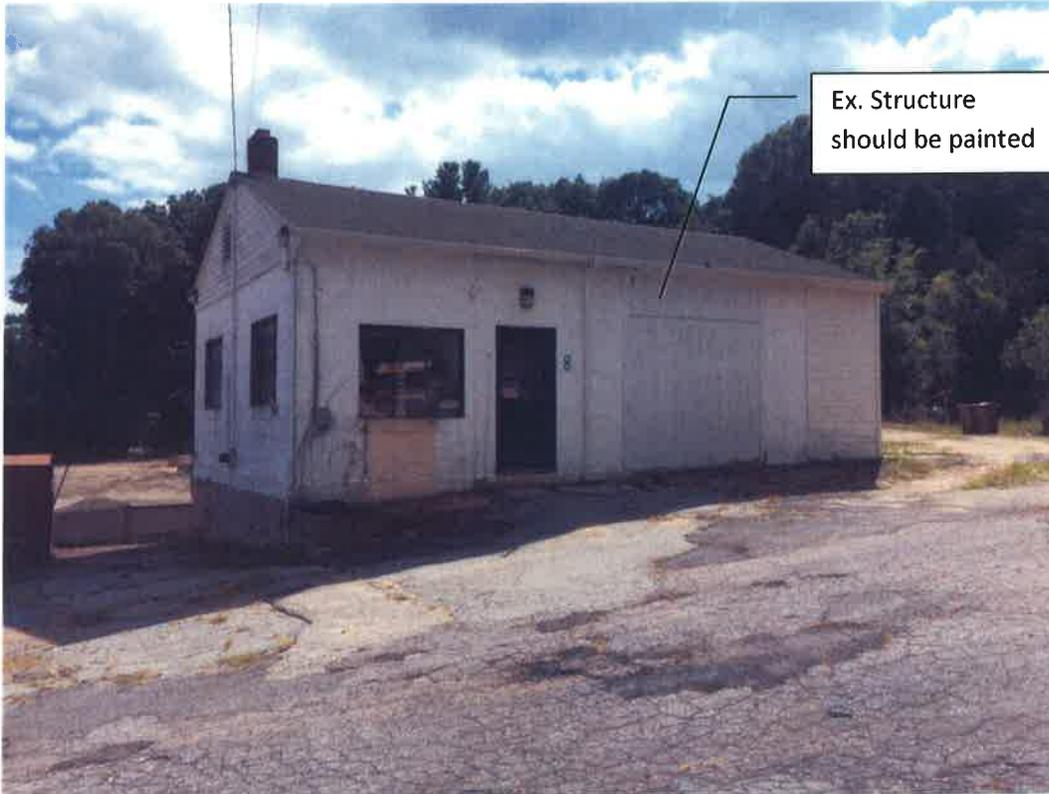
Relocate pile to south end of property

Existing Location of Resident Free Sand & Salt Pile



Proposed Location of Free Sand/Salt Pile

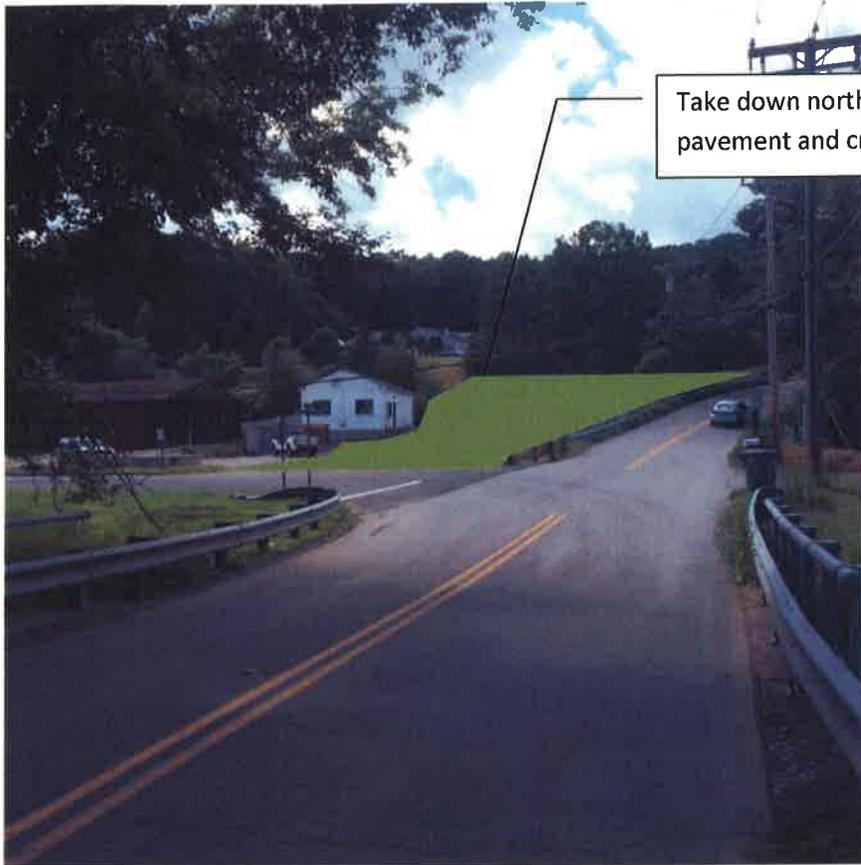
Possible Location of Existing Resident Free Sand & Salt Pile



Existing Building Housing Children's Museum stuff on top floor & Parks & Rec items on the Btm floor



This Building is not being used and should be taken down

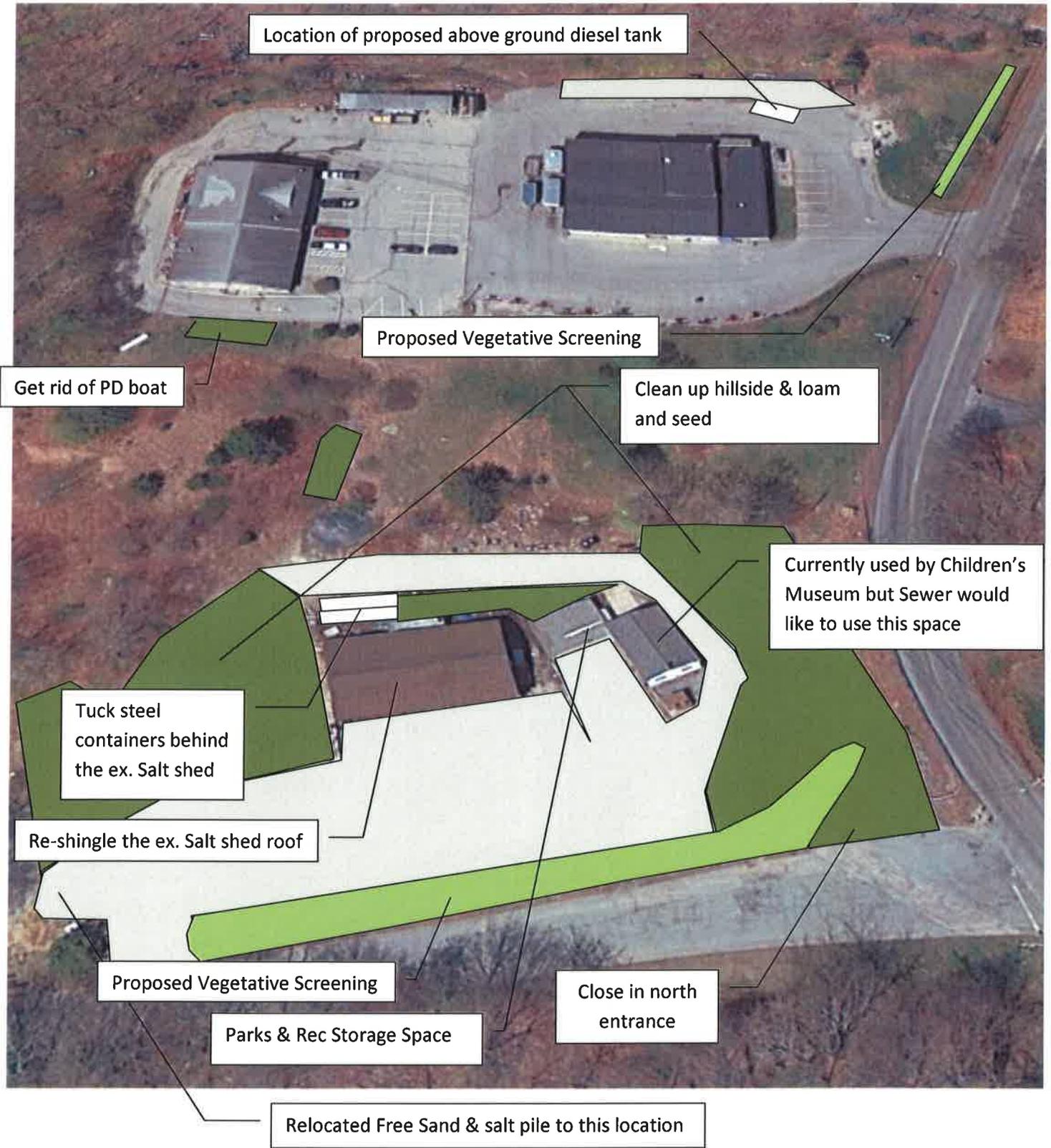


Take down northerly building & pavement and create a green space

Proposed Look at 8 Roxbury Rd from Rt 161



Proposed Look at 8 Roxbury Rd from Romagna Rd



8 & 12 ROXBURY RD

Attachment

**FRIENDS OF SAMUEL SMITH HOUSE AND PROPERTY, INC.
P. O. BOX 126
NIANTIC CT 06357**

Subject: Preservation and Maintenance of the Samuel Smith House

REF: Easements, Declaration of Covenants, and Declaration of Preservation Restrictions, signed and dated 25 April, 2013 (this document defines the terms and conditions of the grant from the State of Connecticut to the Town of East Lyme for the purpose of purchasing the Samuel Smith property)

TO: Members of the Board of Selectmen, Town of East Lyme

The referenced document enumerates and describes the terms and conditions imposed by the State of Connecticut on the Town of East Lyme upon the latter accepting a \$151,000 grant to support the purchase of the Samuel Smith house and property. Sub-paragraph 1 on page 2 of this document requires the Town to preserve and maintain the structures on the property for a period of 20 years:

“[East Lyme] agrees to assume and pay the total costs of continued maintenance, good and sound repair...so as to preserve and maintain the historical, architectural, [etc.]...for a period of twenty (20) years...”

At a meeting between the First Selectman and representatives of the Friends of the Samuel Smith House and Property, Inc., held on 11 August at the Town Hall, the Town’s Attorney, Tracy Collins, averred that the Town indeed has committed to preserve the structures on the property and, further, must act on this commitment immediately inasmuch as the Town has owned the property for more than 2 years and in that time no preservation work has been accomplished.

The Friends of the Samuel Smith House has prepared attachment (1) listing what it considers to be the most necessary preservation items and stands ready to plan, manage, and carry out this mandated effort on behalf of the Town. This work will be accomplished using mostly voluntary or pro bono labor which will significantly reduce the expense. The Friends request only that the Town provide sufficient funds (estimated to be \$8,000) to cover the cost of building materials and the occasional licensed tradesman, as may be required by the work item.

Sincerely,

Marvin Schutt 8/25/2015

Marvin Schutt, President

The Friends of Samuel Smith House and Property, Inc.

Attachments: (1) Proposed preservation worklist with costs

Town Grantor State Grantee

Attn: Tracy M Collins Atty
o/p Walden Smith & Palmer
PO Box 188
NH. 06320

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EASEMENTS, DECLARATION OF COVENANTS, AND DECLARATION OF PRESERVATION RESTRICTIONS

This grant of Easements, Declaration of Covenants, and Declaration of Preservation Restrictions, executed the 25 day of April, 2013 by the TOWN OF EAST LYME (hereinafter referred to as Grantor") and in favor of the STATE OF CONNECTICUT (hereinafter referred to as "Grantee"), acting by the STATE HISTORIC PRESERVATION OFFICE (SHPO), an agency of the State of Connecticut having its offices at One Constitution Plaza, 2nd Floor, Hartford, Connecticut 06103.

CONVEYANCE TAXES COLLECTED

WITNESSETH THAT,

NO
Lesley A. Blais
TOWN CLERK OF EAST LYME

WHEREAS, the Grantee has an interest in the maintenance, protection, preservation, restoration, stabilization and adaptive use of buildings, structures, objects, districts, areas and sites significant to the history, architecture, archaeology or culture of the State of Connecticut, its municipalities or the nation, and in particular the Grantee has an interest in the maintenance, protection, preservation, restoration, stabilization and adaptive use of the site and improvements thereon (hereinafter referred to cumulatively as the "Property") which are described in Exhibits A and B hereof, together with any further exhibits to which Exhibit B may refer, attached thereto and made a part hereof, which site and improvements are hereby declared to be significant in the history, architecture, archaeology or culture of the State of Connecticut, its municipalities or the nation; and

WHEREAS, the Grantee wishes to protect and further such interest by acquiring legally enforceable rights, running with the land, to ensure that the Grantor and its successors in title to the Property use and maintain said Property in a way which will advance and further such interest; and

WHEREAS, the Grantor likewise has an interest in the maintenance, protection, preservation, restoration, stabilization and adaptive use of the Property, which the Grantor acknowledges to be significant to the history, architecture, archaeology or culture of the State of Connecticut, its municipalities or the nation; and

WHEREAS, the Grantor has represented itself as the owner in fee simple of the Property subject only to the encumbrances recited in Exhibit A hereof; and

WHEREAS, the Grantor wishes to impose certain limitations, restrictions, obligations and duties upon itself as the owner of the Property and on the successors to its right, title or interest thereon, with respect to maintenance, protection, preservation, restoration, stabilization and adaptive use of said Property in order to protect the historical, architectural, archaeological and cultural qualities of the Property; and

WHEREAS, the grant of easements in gross from the Grantor, its heirs, successors and assigns to the Grantee, and the declaration of covenants and preservation restrictions by the Grantor on behalf of itself, its heirs, successors and assigns in favor of the Grantee, its successors and assigns, will assist, advance and protect the interests recited above; and

WHEREAS, among the purposes of this instrument is the purpose of the Grantor to guarantee the

preservation of the historical and architectural qualities of the Property, as provided in Section 10-411 of the Connecticut General Statutes and as set forth in Section 10-411(b)(3) of said Statutes, and to impose on the Property "preservation restrictions" as that term is used in Section 47-42a(b) of the Connecticut General Statutes;

NOW, THEREFORE, the Grantor, declaring its intention that it, its heirs, successors and assigns be legally bound hereby, in favor of the Grantee, its successors and assigns, and in consideration of Ten Dollars (\$10.00) and other good and valuable considerations, the receipt of which is hereby acknowledged, does hereby give, grant, bargain, sell and confirm to said Grantee, its successor's and assigns forever, easements in gross and the benefit of covenants, preservation restrictions and obligations (all as more particularly described herein and in Exhibit B hereof, together with any further exhibits to which Exhibit B may refer, attached hereto and made a part hereof) in and to the Property. The easements, covenants, preservation restrictions, and obligations herein described shall constitute binding restrictions, servitudes and obligations upon the Property of the said Grantor and upon the Grantor and its successors in title and interest for the benefit of the Grantee, its successors and assigns; and to that end the Grantor hereby grants and covenants as follows on behalf of itself, its heirs, successors and assigns, jointly and severally, to and for the benefit of the Grantee, its successors and assigns, it being the intent of the Grantor and Grantee that said grants and covenants shall run as a binding servitude with the land:

1. The Grantor agrees to assume and pay the total costs of the continued maintenance, good and sound repair, and administration of the Property, whether now existing or henceforth constructed, so as to preserve and maintain the historical, architectural, archaeological and cultural qualities of the same for a period of twenty (20) years in a manner satisfactory to the Grantee, its successors and assigns. For this purpose, the historical, architectural, archaeological and cultural qualities of the Property shall be deemed to be those qualities described in Exhibits A and B hereof.
2. Without express prior written permission of the Grantee, signed by its duly authorized representative, or the express written permission of the Grantee's successors or assigns, signed by their duly authorized representative or representatives, no building or other structure or improvement shall be built or maintained on the Property site other than those buildings, structures and improvements which are as of this date located on the site, as shown in Exhibits A and B hereof, together with any further exhibits to which Exhibits A and B may refer, attached hereto and made a part hereof; and no alteration or any other thing shall be undertaken or permitted to be undertaken on said site which would affect more than marginally and insignificantly the appearance or the historical, architectural, archaeological and cultural qualities of the Property; PROVIDED, HOWEVER, that the maintenance, repair and preservation of the Property may be made without the written permission of the Grantee or its successors or assigns, and PROVIDED FURTHER,

HOWEVER, that the Grantor may and shall, at its own expense, restore the existing buildings, structures and improvements on the Property site as provided in Exhibit B hereof, together with any further exhibits to which Exhibit B may refer, attached hereto. The express prior written permission of the Grantee or its successors or assigns as provided in this Section 2 shall not be unreasonably withheld. Upon written request for such permission submitted via certified mail, return receipt requested by the then owner or owners of the Property site and the buildings, structures and improvements

thereon, the Grantee, or its successors or assigns, shall act upon such request within ninety days of the receipt thereof, and if such request for permission is not denied in writing mailed to the said requesters at the address or addresses set forth in the request within said ninety days, such request shall be deemed approved and such permission shall be deemed granted.

3. The Property shall not be subdivided.

4. Representatives of the Grantee may inspect the Property at reasonable intervals upon reasonable notice to the possessor thereof in order to determine whether or not the covenants, restrictions, agreements and obligations recited herein are being adhered to and observed.

5. In the event of the nonperformance or violation of any duties of the Grantor, its successors, heirs or assigns, under any easement, covenant or preservation restriction provided herein, the Grantee may sue for money damages. In addition, the Grantee may institute suit to enjoin such violation and to require the restoration of the Property site, buildings, structures, or improvements thereon to the condition required by this instrument and the attachments hereto. In addition, representatives of the Grantee may do whatever is reasonably necessary, including entering upon the Property, in order to correct any such nonperformance or violation, and the Grantee may then recover the cost of said correction from the then owner or owners of the Property, site, buildings, structures and improvements. Should the Grantee resort to any of the remedies set forth in this paragraph, it may recover from the legally responsible parties all costs and expenses incurred in connection with such remedies including, but not limited to, court costs and reasonable attorney's fees.

6. The Grantee may assign the benefit of the easements, covenants, restrictions, obligations and duties set forth in this instrument to another governmental body or to any charitable corporation or trust among the purposes of which is the maintenance and preservation of buildings, structures and sites significant in the history, architecture, archaeology or culture of the State of Connecticut, its municipalities or the nation, and such assignee may act under this instrument in the same way that the Grantee would have acted, and such assignee shall have a like power of assignment.

7. Without the express prior written permission of the Grantee, its successors or assigns, the Property shall be used for the following purposes and no other

Historic House Museum

The procedure for the requesting and granting of such express prior written permission under this section 7 shall be the same as that set forth in Section 2 of this instrument and such permission shall not be unreasonably withheld.

8. The Grantor covenants for itself, its heirs, successors and assigns that the Property shall be open to the public for viewing of its exterior and interior(s) at least twelve days a year on an equitably spaced basis and at other times by appointment. The Grantor shall publish notices, giving dates and times when the Property will be open to the public, in newspapers of general circulation in the community or area in which the Property is

located. Documentation of such notices will be furnished annually to the State Historic Preservation Officer during the term of this covenant, easement and preservation agreement. No charges shall be made for the privilege of such viewing except to the extent that such charges have been approved in advance and in writing by the duly authorized representative or representatives of the Grantee. The procedure for submitting and responding to any request to the Grantee or its successors or assigns for permission to make such charges (which request shall include a proposed schedule of such charges) shall be the same as the procedure set in Section 2 of this instrument.

9. The Grantor, its heirs, successors and assigns, shall maintain for the Property such public liability and fire and extended coverage insurance, and flood insurance if the same is available, as shall, from time to time, be required by the Grantee, its successors or assigns, and shall provide them with satisfactory evidence of such insurance. It is contemplated by the parties hereto that the proceeds of such fire and extended coverage and flood insurance shall be used to repair and restore the Property site, buildings, structures and improvements should they be damaged or destroyed by any peril which the Grantor, its successors, heirs and assigns are required to insure against or which they have insured against. To the extent that the Property is destroyed or damaged by any casualty which the Grantor or its heirs, successors or damaged by any casualty which the Grantor or its heirs, successors or assigns are not required to insure against and have not insured against, the Grantee, its successors and assigns shall have none of the remedies set forth out in Section 5 of this instrument for failure to repair such damages. The Grantor, its heirs, successors and assigns shall also maintain sufficient liability insurance to render the Grantee, its successors and assigns, harmless in any action arising from the acquisition, restoration, operation, maintenance, alteration or demolition of the Property or any portion of the Property, and shall provide them with satisfactory evidence of said insurance.

10. The Grantor warrants and represents that it is the owner in fee simple of the Property and all appurtenances thereto, and no other person or entity has any Interest therein, except as set forth in Exhibit A hereof.

11. The Grantor agrees to comply with Title VI of the Civil Rights Act of 1964 [42 USC 2000(d)] and Section 504 of the Rehabilitation Act of 1973 [29 USC Section 794]. These laws prohibit discrimination on the basis of race, religion, national origin, or handicap. In implementing public access, reasonable accommodation to qualified handicapped persons shall be made in consultation with the Grantee. The Grantor, its heirs, successors and assigns agree that discrimination on the basis of race, color, national origin or disability will not occur in implementing public access provisions in accordance with 43 CFR 17.260.

12. The Grantor agrees and covenants that the provisions of this instrument will be inserted by it into any subsequent deed or instrument of conveyance whereby it transfers title to or any interest in the Property or any portion of the Property.

13. Wherever the context of this instrument would reasonably be deemed to so require, any gender shall include any other gender, the plural shall include the plural.

14. The rights, remedies, privileges, duties and obligations of this instrument shall inure to the benefit of, and be binding upon, as the case may be, the heirs, successors and assigns of the Grantor and Grantee, and the duties set forth herein shall run with the land, except that the provisions of the first sentence of the second paragraph of Section 2 shall not run with the land.

15. The easements, covenants and restrictions set forth herein shall terminate Twenty (20) years from the date of this instrument, but such termination shall not affect rights accrued under this instrument prior to such termination.

EXHIBIT A

Exhibit A to an instrument entitled: EASEMENTS, DECLARATION OF COVENANTS, DECLARATION OF PRESERVATION RESTRICTIONS, executed on the _____ day of April, 2013 by the TOWN OF EAST LYME and the STATE OF CONNECTICUT, acting by the CONNECTICUT STATE HISTORIC PRESERVATION OFFICE and made a part thereof.

The property encompassed by the term of this Preservation Restriction includes all the land with the buildings, structures and appurtenances thereon commonly known as

The Samuel Smith House

"As that certain piece or parcel of land, together with the buildings and improvements located thereon, situated in the Town of East Lyme, County of New London and the State of Connecticut, bounded as follows:

Beginning at a Drill Hole, Which is on the northerly side of Plants Dam Road and approximately 65' west of North Bride Brook Road; thence Northwesterly along a centerline of a brook a distance of 768+/- to a Point connected by a survey tie line North 30°01'35" West a distance of 753.03; thence South 84°24'11" West a distance of 534.36 to a Point; thence South 12°12'45" East a distance of 300.97 to a Point; thence South 12°12'45" East a distance of 425.00 to an Iron Pin; thence North 81°43'16" East a distance of 110.97 to a Point; thence North 89°02'26" East a distance of 22.48 to a Drill Hole; thence North 84°01'07" East a distance of 77.37 to a Point; thence South 86°55'05" East a distance of 10.68 to a Point; thence North 85°12'39" East a distance of 139.04 to a Drill Hole; thence North 82°54'28" East a distance of 146.23 to a Drill Hole; thence North 78°10'39" East a distance of 108.14 to a Point; thence North 76°51'12" East a distance of 149.57 to a Drill Hole; to the Point of Beginning; containing 10.09 acres +/-.

As recorded in Volume _____, Page _____ of the East Lyme Land Records.

EXHIBIT B

Exhibit B to an instrument entitled: EASEMENTS, DECLARATION OF COVENANTS, DECLARATION OF PRESERVATION RESTRICTIONS, executed on the _____ day of April, 2013, by the TOWN OF EAST LYME and the STATE OF CONNECTICUT, acting by the CONNECTICUT STATE HISTORIC PRESERVATION OFFICE and made a part thereof.

MAINTENANCE STANDARDS FOR THE SAMUEL SMITH HOUSE

The Samuel Smith House is listed on the National Register of Historic Houses and is a rare surviving example of a late 1600s house in its original setting on rural land in East Lyme. This land includes 800 feet of the historic Bride Brook. Through the 330 years, it has been owned by only three extended families – each leaving their history but remarkably none destroying the integrity of the house or the property. The house was built in three stages. The original c. 1686 is a south facing “end chimney” on the west. In the 1730s or early 40s, it became a “center chimney” with an addition on the west side of an early 18th century house and finally in 1812 a small ell was added to the back. At present time two outbuildings remain; an original barn very close to the house and an 1812 five-holder outhouse that, in the 1930s, the Henry Ford Museum attempted to buy from the owner, Mrs. Rix, which, thank goodness, for practical reasons she did not sell.

The house has its original features intact.

The Grantors herein will preserve and maintain the structure as described in good condition during the life of this Preservation Restriction.

Recorded May 30 20 13
 (AM)
 11:00 PM Lesley A. Blaw
 East Lyme Town Clerk