

EAST LYME BOARD OF SELECTMEN
REGULAR MEETING MINUTES
OCTOBER 5, 2022

PRESENT: Kevin Seery, Ann Cicchiello, Rose Ann Hardy, Bill Weber and Anne Santoro
EXCUSED: Dan Cunningham

ALSO PRESENT: Town Attorney Ed O'Connell, Finance Director Kevin Gervais, ACO Robert Yuchniuk, Assistant ACO Allison Ryan, and Parks and Recreation Director Jerry Lokken.

Mr. Seery called the meeting to order at 7:07 p.m., and Mr. Seery stated that the Pledge of Allegiance was performed at the start of the Town Meeting.

1b. Additional Agenda & Consent Items

MOTION (1)

Ms. Santoro MOVED to add Agenda Item #3e for discussion of the Hathaway Property.
Seconded by Ms. Cicchiello. Motion passed 5-0-0.

1c. Delegations

Ms. Nickie DeSardo, Bush Hill Road, stated that she is speaking as the Director Of Programming at Southeastern Connecticut Organization for Racial Equity (SCORE). Ms. DeSardo explained that East Lyme has not yet declared racism a public health crisis, and she is hopeful that this matter will be on an upcoming Board of Selectmen agenda.

1d. Approval of Minutes

MOTION (2)

Ms. Santoro MOVED to approve the Board of Selectmen Regular Meeting Minutes of September 21, 2022, as submitted.
Seconded by Ms. Cicchiello. Motion passed 5-0-0.

1e. Consent Calendar

MOTION (3)

Ms. Santoro MOVED to approve the consent calendar for the regular meeting of October 5, 2022, in the amount of \$11,578.88.
Seconded by Ms. Cicchiello. Motion passed 5-0-0.

2a. Special Appropriation – Additional American Rescue Plan Funding – EL Historical Society
This matter was tabled.

3a. Full-time Assistant ACO

MOTION (4)

Ms. Santoro MOVED to approve the conversion of the part-time position of the Assistant Animal Control Officer to a full-time, benefited position. The cost of this newly created full-time position will be \$49,662 in total and will be split equally between the Town of East Lyme and the Town of Waterford. Finalization of said position is contingent upon approval by the Town of Waterford to fund their share of said position. The anticipated start date will be November 1, 2022.
Seconded by Ms. Cicchiello. Motion passed 5-0-0.

3b. Garbage Compactors

DISCUSSION: Mr. Seery reported that the quote for the two compactors that they hope to purchase came in higher than anticipated. The next round of NIP funds will be arriving soon; at that time, further discussion will be held and action taken. There was brief discussion of having

FILED

Oct 11 2022 AT 4:30 AM/PM

(Handwritten Signature)

EAST LYME TOWN CLERK

Board of Selectmen
Regular Meeting of October 5, 2022
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enough in the NIP fund to purchase a third trash compactor for Pennsylvania Avenue in the area of Dairy Queen. This matter was tabled.

3c. Darrow Pond

DISCUSSION: Mr. Seery summarized:

- This matter has been before this Board previously;
- The Parks and Recreation Commission is requesting that the Board of Selectmen turn over 100 acres up at the Darrows Pond site to Parks and Recreation;
- Parks and Rec will maintain and utilize said 100 acres for passive activities;
- Of the ~300 acres at that site, 200 are subject to a conservation easement; the property we are discussing here is the 100 acres not subject to said conservation easement.

Attorney O'Connell summarized:

- A good deal of information is presented and noted; attached hereto as exhibit 1.
- It is noted that before this matter is voted on at a future meeting, the draft resolution should be changed as follows: Under "It Is Resolved", #2 references "Sections 2 through 7". This should be changed to read, "Sections B through G".
- This is a work in progress and needs to be presented to and discussed with the Parks and Recreation Commission.

The following matters were briefly discussed:

- Ms. Santoro asked about existing utility easements on the property, especially ones which would affect the 100 acres being turned over.
- Mr. Seery stated that the Town Engineer would provide information on those easements.
- Ms. Hardy also noted that there had been talk of a proposed water tower site on that property, and that maybe the Water and Sewer Commission should also be involved in the discussion.
- Mr. Weber felt that #4 and #5 were redundant.
- Mr. Seery stated that the Parks and Recreation Commission were waiting for the property to be turned over to that department before conducting the study.
- Mr. Tom Beebe, Chairman of the Parks and Recreation Commission, stated that he speaks for the Commission in showing his support of the Board of Selectmen approving this transaction.
- Mr. Beebe stated that the Commission would consider such a transaction as a solid commitment by the Town and would hence move forward with the study and further passive development of the 100 acres.

This matter was tabled.

3d. Charter Revision Charge

DISCUSSION: Mr. Seery listed the people to be appointed to the Charter Revision Commission, listed below. Ms. Hardy stated that there might be a couple more people that were unaware of the time constraints that could not make it tonight that would like to be considered; Ms. Santoro concurred.

Attorney O'Connell suggested:

- Appoint one staff person to do all of the note keeping to keep everything organized in one place.
- Mr. Seery stated that there is money budgeted to bring in an intern to assist with the note and recordkeeping.
- The Town Attorney will attend at least the first meeting of this commission.

Mr. Barry Sheckley and Mr. Vivek Purohik, prospective members of said Charter Revision Commission, addressed the Board and provided a summary of background and qualifications for consideration.

MOTION (5)

Ms. Santoro MOVED to approve the resolution as presented at the regular meeting of the Board of Selectmen of October 5, 2022, and as stated below; and that

WHEREAS, pursuant to Section 7-190(a) of the Connecticut General Statutes the Board of Selectmen desires to appoint a Charter Revision Commission consisting of 11 electors of the Town of East Lyme; and

WHEREAS, pursuant to Section 7-190(b) of the Connecticut General Statutes the Board of Selectmen desires to make recommendations to the Charter Revision Commission; and

WHEREAS, pursuant to Section 7-190(b) of the Connecticut General Statutes the Board of Selectmen must establish a date by which said Commission shall submit its draft report to the Town Clerk for transmittal to the Board of Selectmen;

NOW, THEREFORE, IT IS RESOLVED, that the following 11 electors of the Town of East Lyme are hereby appointed to the Charter Revision Commission:

Jeffrey McNamara (R)
Marc Salerno (R)
Timothy Hagen (R)
Larry Fitzgerald (R)
Beth Hogan (D)
Barry Sheckley (D)
Jay Ginsberg (D)
Vivek Purohik (D)
Wayne Blair (U)
Maryanna Stevens (U)
Anna Johnson (U)

IT IS FURTHER RESOLVED, that the following recommendations be directed to the Charter Revision Commission for its considerations and report:

1. Consider possible elimination of automatic budget referendum provision in Section 7.3 of the Charter.
2. Consider possible merger of the Planning Commission and Zoning Commission.
3. Consider possible amendment of Section 2.7 to provide four year terms of Selectmen and two or four year terms of First Selectman.
4. Consider possible removal of Town Clerk and Tax Collector from elective offices and add said offices to administrative offices.
5. Consider the possible exemption from the residency requirement set forth in Section 4.1.2 certain appointive offices, such as Director of Emergency Management, Dog Warden, etc., and the offices described in Sections 5.3- 5.7.
6. Eliminate references to constables and special constables in the existing charter.
7. Consider the possible amendment of Section 6.3.4 to provide that if the Board of Finance does not act on requests for special appropriations or transfers of funds within specified time, the result is an automatic approval.
8. Consider the possible amendment of Section 6.3 to provide that projects funded

entirely by grants from the State of Connecticut which do not require an appropriation of town funds need not be approved by the Board of Finance or a Town Meeting.

9. Consider the possible amendment of Section 6.3.1 to provide that the current dollar threshold of \$10,000 for special town meetings be raised.

10. Consider the possible addition of an appointive officer named the "Operations Officer" to assist the First Selectman in the performance of his or her administrative duties.

11. Consider the possible amendment of Section 3.4.3 to eliminate newspaper publication when allowed by law and substitute electronic and website notice.

12. Consider the possible amendment of Section 2.5.4 to provide that an appointee to a vacancy in an elective office shall serve the remainder of the term that was filled.

13. Consider reinstating the Conservation Commission which will be comprised of members from both the Inland Wetlands Agency and the Commission for the Conservation of Natural Resources.

The Commission may also consider such other items pertaining to the Charter as it deems desirable or necessary.

IT IS FURTHER RESOLVED, that the Commission shall, in its report, comment upon each recommendation which it has been directed to consider and on any other items pertaining to the Charter that the Commission has deemed desirable or necessary.

IT IS FURTHER RESOLVED, that the Commission shall submit its draft report to Town Clerk for transmittal to the Board of Selectmen on or before August 1, 2023.

IT IS FURTHER RESOLVED, that the Commission shall terminate upon acceptance or rejection of its final report by the Board of Selectmen.

Seconded by Ms. Cicchiello. IN FAVOR; Seery, Santoro, Cicchiello and Weber. OPPOSED; Hardy. Motion passed 4-1-0.

3e. Discussion – Harney Property
DISCUSSION:

Mr. Seery reported that recently the deed had been recorded that the Hathaway Farms property has been sold to the East Lyme Land Trust. This is a public document available for review in the Town Clerk's office. He then asked Ms. Cicchiello to report on the Inland Wetlands Commission meeting that she attended.

Ms. Cicchiello reported the following:

- Mr. Luich reported that the EL Land Trust paid fair market value by yellow book appraisal.
- Public access next spring early summer
- Forbidden public access until loan is paid back – bridge loan terms
- Disappointed in BOS had access to federal grants that were not sought after.
- EL land trust lost out on grants because of town.
- Survey done took 15 months. Difficult no prior survey done.
- Mr. Carlson spoke also:
 - will protect watershed and give community additional recreational activities.

Mr. Seery Stated:

- \$2.3M
- Was not aware of any grants available.
- Booklet noted yellow book appraisals but not included and never received; requested from Hathaway Farms and CT DEEP.

- April 7th appraisal is first that he knows of.
- April 27th appraisal provided by EL Land Trust stated \$2.1M.
- Parcel on Pattagansett Lake considered waterfront sold recently.
- Town wanted to purchase the property but did not feel we had all of the information that we requested.
- Open to future discussions with EL Public Trust.

4a. Ex-Officio Reports

Ms. Hardy Reported:

- Board of Education (BOE)
 - Entire school district has been without internet since Saturday, with no fix time given.
 - Lots of difficulty instructing; most lessons are now based around internet programs and applications.
 - They had a recent presentation regarding Conflict Resolution; video of BOE meeting posted online.

Ms. Cicchiello Reported:

- Historic Properties upcoming events;
 - This Saturday from 1p-3p dedication of kitchen at Brookside Farm Museum
 - October 9th from 1p-4p at McCook's Park 2nd annual Indigenous People Day
 - October 15th from 10a-3p Sam Smith Farmstead end of harvest celebration.
 - October 23rd from 4p-6p Smores and Scary Stories at Brookside Farm Museum – just bring your sticks and they provide the rest!.

4b. First Selectman's Report

- Would like to invite the SCORE group to come to a meeting in November.
- Hired both an IT and an HR Director; both are starting soon.
 - Sandra Spencer, Human Resources Director
 - Daniel Cleary, IT Director.
- Demolition of buildings around exit 74 is going well and all buildings are gone.
- Exit 75 gas station work is ongoing.
- New owners of the car wash will be meeting with Zoning soon to work on their plans for a new car wash.
- Sift Bakery should be ready to open in the next couple of weeks.
- Public Works has put lines on Smith and Grand Streets to assist with parking in that area.
- Town Engineer is currently investigating a possible 4-way stop at Grand and Smith Streets.
- Annual Oyster Festival benefiting the Miracle League was a success; ~71,000 tickets sold.
- VFW on Sunday held at the newly dedicated Sue Kumro Field - corn hole tournament raised ~\$5,000.
- Saturday night at Rosa Negra, attended Hispanic Heritage Month celebration.
- Water restrictions should be lifted soon.

5. Communications

There were none.

6. Public Comment

There was none.

7. Selectman's Response

There was none.

8. Executive Session

MOTION (6)

Ms. Santoro MOVED to enter into executive session at 8:34 p.m. for the purpose of discussing a real estate matter, Hathaway Farms LLC., and personnel matters - Ongoing Union/Labor negotiations.

Seconded by Mr. Cunningham. Motion passed 5-0.

The Board returned to the regular meeting at 9:07 p.m. and Ms. Santoro stated that no formal votes were taken in executive session.

9. Adjourn

MOTION (7)

Ms. Santoro MOVED to adjourn the October 5, 2022, regular meeting of the East Lyme Board of Selectmen at 9:07 p.m.

Seconded by Ms. Cicchiello. Motion passed 5-0.

Respectfully Submitted By:

Sandi Anderson

Sandra Anderson
Recording Secretary

AREAS UNDER JURISDICTION OF PARKS AND RECREATION COMMISSION**§ 96.15 REGULATIONS.**

(A) This section shall apply to McCook Point Park and Beach, Veterans Memorial Park, Boardwalk, Cini Park, Samuel Peretz areas and all other areas within the town designated as under the control of the Parks and Recreation Commission by vote of the Board of Selectmen.

(B) No person shall enter any area which is close to the public as plainly designated by signs.

(C) No person shall kindle, build, maintain or use a fire except either in fireplaces provided for that purpose, or in portable fireplaces in areas plainly designated for that use.

(D) No person shall possess or have under his or her control any alcoholic beverages in areas where it is prohibited as plainly designated by signs.

(E) No person shall park any motor vehicle except in areas plainly designated by sign or other marking as parking areas.

(F) No person shall discard or abandon any refuse, rubbish or garbage except in containers provided for that purpose.

(G) No person shall possess or have under his or her control any glass bottle or crockery in areas where it is prohibited as plainly designated by sign.

(H) No person shall bring any dog (other than certified service dogs) on to the Niantic Bay Boardwalk.

(I) No person shall bring any dog (other than certified service dogs) onto any town-owned beach and McCook Point Park from Memorial Day to Labor Day.

(Ord. effective 6-19-1971; Ord. passed 12-21-2005; Ord. passed 4-20-2017) Penalty, see § 95.99

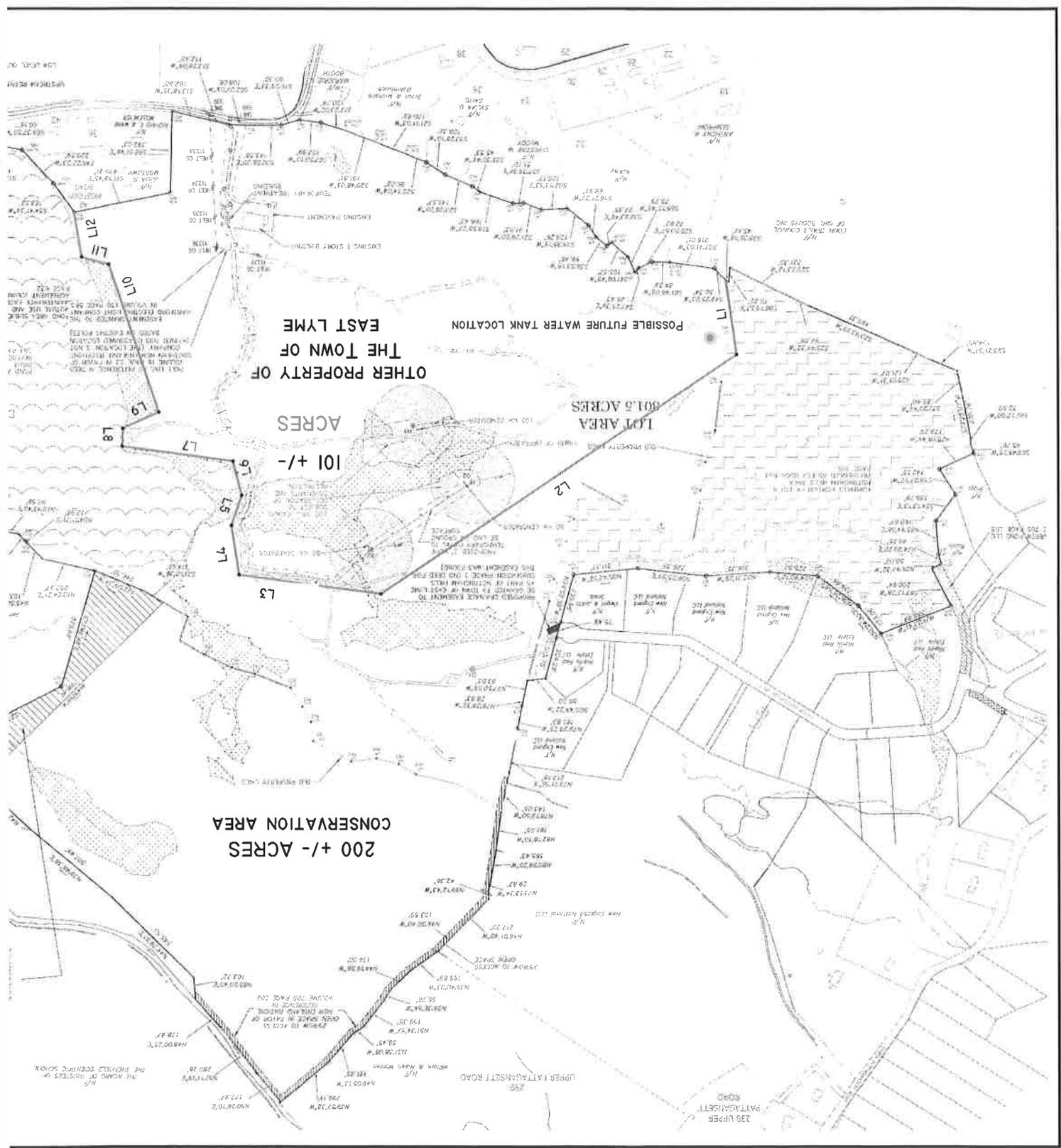
Editor's note:

TM Volume 10, page 369, Amended

§ 96.99 PENALTY.

(A) Any person violating any provision of this chapter, for which no other penalty is provided, shall be subject to the penalty provisions of § 10.99.

(B) Any person who shall violate any provision of § 96.15 shall be fined not more than \$50.
(Ord. effective 6-19-1971; Ord. passed 12-21-2005; Ord. passed 4-20-2017)



OTHER PROPERTY OF
THE TOWN OF
EAST LYME

ACRES
101 +/-

LOT AREA
80.5 ACRES

200 +/- ACRES
CONSERVATION AREA

POSSIBLE FUTURE WATER TANK LOCATION

UPPER PATTAQUANSETT ROAD
PATTAQUANSETT ROAD
239 UPPER

WESTERN BEACH
100 WEST 90'

THE ROAD OF BOSTON ST.
THE BIRCHFIELD SCENIC SCHOOL

280.70
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Return to:
TCORS
43 Broad St.
Newtown CT
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VOL 0924 PAGE 697

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CONSERVATION EASEMENT

This is a CONSERVATION EASEMENT ("Conservation Easement") granted by the Town of East Lyme, (the "Owner") to the Friends of the Oswegatchie Hills Nature Preserve, Inc., a non-profit corporation organized and existing under the laws of the State of Connecticut (the "FOHNP"). Owner and FOHNP are sometimes collectively referred to herein as the "Parties".

RECITALS:

WHEREAS, Owner purchased approximately 300 acres of real property adjacent to Darrow Pond located at 16 Mostowy Road in East Lyme, Connecticut (the "Property") from the Trust for Public Land;

WHEREAS, such purchase was conditioned on Owner's agreement to commit a portion of the Property to permanent conservation;

WHEREAS, the purchase of the Property and funding therefore was approved by Owner's Planning Commission on August 2, 2011, Owner's Board of Selectmen on August 3, 2011, Owner's Board of Finance on August 17, 2011, and at a Referendum of the Town of East Lyme on September 1, 2011;

WHEREAS, the Owner desires to protect a portion of that property of approximately 200 acres as set forth on the description attached hereto as Exhibit A (the "Protected Property") for conservation purposes by means of the conservation easement described herein;

WHEREAS, the FOHNP desires to hold the conservation easement on the Protected Property in furtherance of its purposes;

AND THEREFORE, the parties hereto agree as follows:

I. CONVEYANCE OF CONSERVATION EASEMENT:

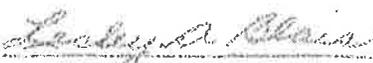
Pursuant to the laws of the State of Connecticut and in consideration of the facts recited above and the mutual covenants contained herein and for good and valuable consideration, the receipt of such which is hereby acknowledged, the Owner hereby conveys and warrants to the FOHNP and its successors and assigns a perpetual conservation easement over the Protected Property.

This conservation easement is subject to all existing easements, encumbrances, or restrictions of record affecting the Protected Property (collectively, the "Existing Easements"), which are described on Exhibit B hereto. This conservation easement consists of the following rights, terms and restrictions:

- I. LAND USE RESTRICTIONS. Restrictions imposed upon the Protected Property include the following:
 - I.1. Institutional, Industrial and Commercial Activity. No institutional, industrial or commercial use of the Protected Property is allowed except as permitted in paragraph 2 below.

NO
CONVEYANCE TAXES COLLECTED

41176486.DOCX


TOWN CLERK OF EAST LYME

- 1.2. Agricultural Use. No agricultural use, including, without limitation, garden plots, tilling, plowing, commercial cultivation of row crops, livestock grazing or production, haying or feedlots of the Protected Property is allowed except for habitat maintenance as set forth in paragraph 2 below.
- 1.3. Residential Development. No residential use or development of the Protected Property is allowed.
- 1.4. Right of Way. No right of way shall be granted across the Protected Property in conjunction with any industrial or commercial use or residential development of other land not protected by this Conservation Easement.
- 1.5. Mining. No mining, drilling, excavating, dredging, exploring for or removing of loam, peat, sand, gravel, or any minerals or fossil fuels from the Protected Property is allowed except as necessary for proper drainage, soil conservation or management of invasive species or in furtherance of the activities permitted in paragraph 2 below.
- 1.6. Subdivision. The Protected Property may not be divided, subdivided, or partitioned. The Protected Property may be conveyed only in its entirety as a single parcel, regardless of whether it consists of or was acquired as separate parcels or is treated as separate parcels for property tax or other purposes.
- 1.7. Density. No portion of the Protected Property may be used to satisfy land area requirements for other property not subject to this Conservation Easement for purposes of calculating building density, lot coverage or open space under otherwise applicable laws, regulations or ordinances controlling land use.
- 1.8. Structures and Improvements. No structures of any kind, temporary or permanent, may be constructed on the Protected Property without the prior written consent of the FOHNP, except however, the Owner reserves the right to locate on the Protected Property minor rustic structures to enhance the opportunity for low-impact outdoor recreation, nature observation and study, such as the activities set forth in 2.2, including but not limited to such structures as boundary markers, tents, trail markers, benches, trail improvements such as steps, foot bridges, docks, and railings, primitive campsites, privies and accompanying septic system, picnic tables, registration boxes, barriers or fences; provided that to the extent reasonably practicable any such structures shall be constructed of rustic material that blends with the natural surroundings and complements the natural and scenic features of the landscape. This restriction includes, without limitation, the following:
 - a. Buildings. No schools, landing strips or pools, mobile homes, septic systems, communication towers, wind turbines, or similar structures may be placed on the Protected Property.

- b. Signs. No billboards, advertising display or other signs may be placed or erected on the Protected Property except for small signs for informational, directional, or interpretive purposes.
 - c. Roads. No roads or driveways shall be constructed or established. The paving or otherwise surfacing of paths, roads or driveways with concrete, asphalt, or any other impervious paving material is prohibited

Unpaved paths or foot trails may be established on the Protected Property by Owner or its designee for uses permitted hereunder.
 - d. Fences. Existing fences may be maintained, improved, replaced or removed. Additional fences may be constructed and maintained, improved, replaced or removed to mark boundaries, to secure the Protected Property or as needed in carrying out activities permitted by this Conservation Easement.
 - e. Tents. In the event Owner permits camping on the Protected Property, tents or lean-tos may be constructed, maintained and improved.
- 1.9. Vegetation Management. No timber harvesting, removal, cutting, pruning, trimming or mowing of any trees, grasses, shrubs or other vegetation, living or dead, and no introduction of non-native species is allowed except as follows:
- a. In conjunction with uses permitted in paragraph 2 below.
 - b. As reasonably required to construct and maintain permitted structures, trails, and other improvements and provided that vegetation shall be restored to the greatest extent reasonably practicable following any construction to a condition consistent with the conservation purposes of this Conservation Easement.
 - c. As reasonably required to prevent or control insects, noxious weeds, invasive vegetation, disease, fire, personal injury or property damage.
 - d. To remove downed or dead timber for firewood for personal use.
 - e. To maintain the character and nature of the habitat and/or ecosystem provided it is in substantial accordance with a forest management plan prepared by a professional forester.
- 1.10. Pesticides. The use of chemical herbicides, pesticides, fungicides, fertilizers and other agents that may have an adverse effect on wildlife, waters, and other important conservation interests to be protected by this Conservation Easement is prohibited, except that organic herbicides, pesticides or fungicides may be used if deemed necessary for management of invasive species.

- 1.11. Water. No alteration or manipulation of natural watercourses, ponds, lakes, wetlands or other surface or subsurface bodies of water is allowed except to restore or enhance wildlife habitat or native biological communities or to improve or enhance the function and quality of existing wetlands, or in connection with activities permitted hereunder, use of the Protected Property as a water supply source, or in connection with maintenance, repair, construction, and improvement of the dam under Mostowy Road.
- No activities on or uses of the Protected Property that cause significant erosion or are materially detrimental to water quality or purity are allowed.
- 1.12. Dumping. No junk, trash, non-compostable garbage, vehicle bodies or parts, refuse, solid or chemical waste or unsightly or offensive material may be placed, stored, dumped or accumulated on the Protected Property. This does not prohibit burning or composting of excess brush or other plant material resulting from activities permitted by this Conservation Easement.
- 1.13. Underground Storage Tanks. No underground storage tanks shall be installed on the Protected Property.
- 1.14. Vehicles. Snowmobiles, dune buggies, motorcycles, all-terrain vehicles or other types of motorized vehicles or watercraft may not be operated on the Protected Property, except small personal motorized wheelchairs or other similar personal devices for the disabled and for emergency purposes.
- 1.15. Aircraft. No use, landing or storage of aircraft, helicopters, or similar machines or devices, except as required by police, firefighters, emergency personnel or owners or other governmental agents in carrying out their lawful duties.
- 1.16. Active Recreation Fields. Construction of active recreational fields shall not be permitted on the Protected Property. This includes, without limitation, baseball, football, soccer and lacrosse fields, bocce courts, horseshoe pits, and paintball courses.
- 1.17. Dog Parks. Dog parks shall not be permitted on the Protected Property.
2. **RESERVED RIGHTS**. The Owner retains all rights associated with ownership and use of the Protected Property that are not expressly restricted or prohibited by this Conservation Easement.

Without limiting the generality of the above, the following rights are expressly reserved and the Owner may use and allow others to use the Protected Property as follows:

- 2.1. Right to Convey. The Owner may sell, give, lease, bequeath, devise, mortgage or otherwise encumber or convey the Protected Property, provided:
- a. Any conveyance or encumbrance of the Protected Property is subject to this Conservation Easement.

- b. The Owner will notify the FOHNP of any conveyance within fifteen (15) days after closing and will provide the FOHNP with the name and address of the new owner and a copy of the deed transferring title.

The enforceability or validity of this Conservation Easement will not be impaired or limited by any failure of the Owner to comply with this subparagraph.

- 2.2. Recreational and Educational Uses. The Protected Property may be used for hiking, walking, snowshoeing, cross-country skiing, running, horseback riding, camping, bird watching, nature observation or study, educational activities, and other similar low impact recreational and educational programs or activities.

Biking shall be allowed on the Permitted Property on designated trails that are designed to prevent erosion.

Minor rustic structures such as footbridges, trail barriers, and benches may be placed on the Protected Property in conjunction with these activities. The Protected Property may not be used for more than minimal commercial recreational purposes.

- 2.3. Habitat. The Protected Property may be used to maintain, restore or enhance habitat for wildlife and native biological communities. Agricultural activities for the purpose of maintaining the ecosystem and/or habitat shall be permitted. Incidental revenues from agricultural activities to maintain the ecosystem and/or habitat shall be permitted.
- 2.4. Water. The Owner may use the Protected Property as a drinking water source.
- 2.5. Hunting. The Protected Property may be used for hunting only when recommended by the Connecticut Department of Energy and Environmental Protection (or its successor).
- 2.6. Trail Building. Trails on the Protected Property may be created and maintained by Owner or Owner's designee.

3. FOHNP'S RIGHTS AND REMEDIES. In order to accomplish the purposes of this Conservation Easement, the FOHNP has the following rights and remedies:

- 3.1. Right to Enter. The FOHNP has the right to enter the Protected Property at its sole discretion at reasonable times and in a reasonable manner for the following purposes:
 - a. To inspect the Protected Property and to monitor compliance with the terms of this Conservation Easement.
 - b. To obtain evidence for use in seeking judicial or other enforcement of this Conservation Easement.

- c. To survey or otherwise mark the boundaries of all or part of the Protected Property if necessary to determine whether there has been or may be a violation of this Conservation Easement. Any survey or boundary demarcation completed under this provision will be in the FOHNP's sole discretion and at the FOHNP's expense.
- d. To otherwise exercise its rights under this Conservation Easement.

In order to enter the Protected Property, the FOHNP has a right of access over other property currently owned by the Owner as identified on the Property Map.

- 3.2. Right of Enforcement. The FOHNP has the right to prevent or remedy violations of this Conservation Easement through appropriate judicial action brought against the Owner or other responsible party in any court of competent jurisdiction.
 - a. Notice. The FOHNP may not initiate judicial action until the Owner has been given notice of the violation, or threatened violation, of this Conservation Easement and a reasonable opportunity to correct the situation.
 - b. Remedies. Remedies available to the FOHNP in enforcing this Conservation Easement include the right to request temporary or permanent injunctive relief for any violation or threatened violation of this Conservation Easement, to require restoration of the Protected Property to its condition at the time of this conveyance (or as near to such condition as reasonably practicable) or as otherwise necessitated by a violation of this Conservation Easement, to seek specific performance or declaratory relief and to recover damages resulting from a violation of this Conservation Easement.
 - c. Discretionary Enforcement. Enforcement of the terms of this Conservation Easement is solely at the discretion of the FOHNP. The FOHNP does not waive or forfeit the right to take any action necessary to assure compliance with the terms of this Conservation Easement by any delay or prior failure of the FOHNP in discovering a violation or initiating enforcement proceedings.
 - d. Acts Beyond Owner's Control. The FOHNP may not bring any action against the Owner for any change to the Protected Property resulting from causes beyond the Owner's control, such as changes caused by fire, flood, storm, natural deterioration or the unauthorized acts of persons other than the Owner or the Owner's agents, employees or contractors or resulting from reasonable actions taken in good faith under emergency conditions to prevent or mitigate damage resulting from such causes.
- 3.3. Limitation on Rights. Nothing in this Conservation Easement gives the FOHNP the right or responsibility to exercise physical control over day-to-day operations

on the Protected Property or to become involved in management decisions involving the use, handling or disposal of hazardous substances or to otherwise become an operator of the Protected Property within the meaning of the Comprehensive Environmental Response, Compensation and Liability Act, or other similar successor statutes or laws whether federal, state or local in nature, regarding responsibility for environmental conditions associated with contamination.

4. MARKING; DOCUMENTATION.

- a. Marking. The Owner has or will mark the Protected Property within nine (9) months of the date hereof.
- b. Documentation. The current uses of the Protected Property and the state of any existing improvements are or will be more fully described in a property report on file at the office of the FOHNP and approved by the Owner, such approval not to be unreasonably withheld. The Owner and the FOHNP acknowledge that this property report does or will accurately represent the condition of the Protected Property at the time of this conveyance and may be used by the FOHNP in monitoring future uses of the Protected Property, in documenting compliance with the terms of this Conservation Easement and in any enforcement proceeding. This property report, however, is not intended to preclude the use of other information and evidence to establish the present condition of the Protected Property in the event of a future controversy.

5. HOLD HARMLESS. Owner shall hold harmless, indemnify, and defend FOHNP, its directors, officers, members, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively, "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with: (a) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Protected Property, regardless of cause, except to the extent of the adjudicated proportionate fault of any of the Indemnified Parties; and (b) the Existing Easements.

6. GENERAL PROVISIONS.

- 6.1. Assignment. This Conservation Easement may only be assigned or transferred by the FOHNP with the Owner's prior written approval to be given in the Owner's sole discretion.
- 6.2. Amendment. Under appropriate circumstances, this Conservation Easement may be modified or amended.

Any amendment or modification must be in writing and recorded in the same manner as this Conservation Easement.

6.3. Extinguishment. Extinguishment or termination of this Conservation Easement is subject to the following:

- a. This Conservation Easement may be extinguished only through judicial proceedings and only under the following circumstances:
 - (i) if unexpected change in the conditions of or surrounding the Protected Property makes the continued use of the Protected Property for the conservation purposes set out above impossible or impractical, or
 - (ii) pursuant to the proper exercise of the power of eminent domain.
- b. The Owner recognizes that uses of the Protected Property prohibited by this Conservation Easement may, in the future, become or may be more economically viable than those uses permitted by the Conservation Easement. The Owner also recognizes that neighboring properties may, in the future, be put entirely to uses not permitted on the Protected Property by this Conservation Easement.

The Owner and the FOHNP believe that such changes will increase the public benefit provided by this Conservation Easement. Therefore, such changes are not considered unexpected changes and shall not be deemed to be circumstances justifying the extinguishment of this Conservation Easement as otherwise set forth above.

6.4. Intentionally Omitted.

6.5. Subsequent Liens. No provisions of this Conservation Easement should be construed as impairing the ability of Owner to use this Property as collateral for subsequent borrowing. Any mortgage or lien arising from such a borrowing is subordinate to this Conservation Easement.

6.6. Ownership Costs and Liabilities. The Owner retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Protected Property. The Owner agrees to defend, indemnify and hold the FOHNP harmless from any and all costs or liability for any personal injury, property damage, or property claims related to the use of the Protected Property occurring on or related to the Protected Property or the existence of this Conservation Easement.

6.7. Notice and Approval. Any notice or request for approval required by this Conservation Easement must be written and is subject to the following:

- a. Delivery. Any required notice or request for approval must be delivered personally or sent by first class mail or other nationally recognized delivery service to the appropriate party at the following addresses (or other address specified in writing):

To the Owner:

Town of East Lyme
P.O. Box 519
108 Pennsylvania Avenue
Niantic, CT 06357
Attn: Paul Formica, First Selectman

To the FOHNP:

Friends of the Oswegatchie Hills Nature Preserve, Inc.
9 King Arthur Drive
Niantic, CT 06357

- b. Timing. Unless otherwise specified in this Conservation Easement, any required notice or request for approval must be delivered at least 30 days prior to the date proposed for initiating the activity in question.
- c. Content. The notice or request for approval must include sufficient information to allow the other party to make an informed decision on whether any proposed activity is consistent with the terms and purposes of this Conservation Easement.

- 6.8. Binding Effect. This Conservation Easement shall run with and burden the Protected Property in perpetuity. The terms of this Conservation Easement are binding and enforceable against the current Owner of the Protected Property, all successors in title to the Protected Property and all other parties entitled to possess or use the Protected Property.

This Conservation Easement creates a property right immediately vested in the FOHNP and its successors and assigns that cannot be terminated or extinguished except as set out herein.

If at any time the FOHNP or other holder of this Conservation Easement becomes the owner of all or a portion of the fee interest in the Protected Property, this Conservation Easement shall not be deemed to merge with the underlying fee interest but shall remain in force and effect unless otherwise terminated or extinguished as set out herein.

- 6.9. Definitions. Unless the context requires otherwise, the term "Owner" includes, jointly and severally, the current owner or owners of the Protected Property identified above and their personal representatives, heirs, successors and assigns in title to the Protected Property. The term "FOHNP" includes the FOHNP's successors or assigns to its interest in this Conservation Easement.

- 6.10. Termination of Rights and Obligations. A party's rights and obligations under this Conservation Easement terminate upon the transfer or termination of that party's interest in this Conservation Easement or the Protected Property, provided, however, that any liability for acts or omissions occurring prior to the transfer or termination will survive that transfer or termination.
- 6.11. Recording; Section 47-42e. The Owner will record this Conservation Easement in a timely manner in the official records for the county in which the Protected Property is located. The FOHNP may re-record this Conservation Easement or any other documents necessary to protect its rights under this Conservation Easement or to assure the perpetual enforceability of this Conservation Easement.
- This Conservation Easement constitutes a recording of a Conservation Restriction under Section 47-42e of the Connecticut General Statutes.
- 6.12. Controlling Law and Construction. This Conservation Easement shall be governed by the laws of the State of Connecticut and construed to resolve any ambiguities or questions of validity of specific provisions in favor of giving maximum effect to Owner's ability to use the Protected Property.
- 6.13. Severability. A determination that any provision or specific application of this Conservation Easement is invalid shall not affect the validity of the remaining provisions or any future application.
- 6.14. Additional Documents. The Owner agrees to execute or provide any additional documents reasonably needed by the FOHNP to carry out in perpetuity the provisions and the intent of this Conservation Easement, including, but not limited to any documents needed to correct any legal description or title matter or to comply with any federal, state, or local law, rule or regulation.
- 6.15. Entire Agreement. This document sets forth the entire agreement of the parties with respect this Conservation Easement and supercedes all prior discussions or understandings.
- 6.16. Counterparts. This Conservation Easement may be executed in one or more counterparts, each of which shall be deemed an original. The signatures to this Conservation Easement may be executed and notarized on separate pages and when attached to this document shall constitute one complete document.

IN WITNESS WHEREOF, the Owner and FOHNP have voluntarily executed this Conservation Easement on the 27th day of November, 2013.

Witness:

Douglas Stevens
Douglas C. Stevens
Kristin Warrington
Kristin Warrington

OWNER:

TOWN OF EAST LYME

By:

[Signature]

Its First Selectman

STATE OF CONNECTICUT)

) ss

East Lyme

COUNTY OF New London)

The foregoing instrument was acknowledged before me this 27th day of November, 2013, by Paul Formica, as authorized signatory of the Town of East Lyme, and acknowledged to be the free act and deed of such Town.

[Signature]

Commissioner of the Court
My Commission Expires:--

EXHIBIT A



EXHIBIT B

EXISTING EASEMENTS

1. Conveyance of rights in and to streams and waters by Albert R. Darrow to the City of New London by deed dated July 13, 1901 and recorded in Volume 13, Page 277 of the East Lyme Land Records.
2. Pole Line Permit from A.R. Darrow in favor of the Southern New England Telephone Company dated August 2, 1905 and recorded in Volume 16, Page 23 of the East Lyme Land Records.
3. Utility easement in favor of The Eastern Connecticut Power Company from William Mostowy dated October 14, 1926 and recorded October 27, 1926 in Volume 27, Page 167 of the East Lyme Land Records.
4. Pole line easement in favor of The Hartford Electric Light Company from William M. Mostowy and Julia S. Mostowy dated May 28, 1971 and recorded June 10, 1971 in Volume 130, Page 563 of the East Lyme Land Records.
5. Easement in favor of The Southern New England Telephone Company from J.C. Penney Company, Inc. dated May 5, 1972 and recorded May 16, 1972 in Volume 136, Page 125 of the East Lyme Land Records.
6. Common law rights of upper and lower riparian owners in and to natural watercourses flowing through or adjoining the premises, the statutory rights of others in and to any such watercourse, including the right to regulate and control the use of the land adjacent to the watercourse as set forth in Warranty Deeds from Stephen Sawitski to Niantic Real Estate Limited Liability Company, and from Sonya C. Zammataro and Joanne McCaffrey to Niantic Real Estate Limited Liability Company, both dated October 1, 2002 and recorded respectively in Volume 584, Page 624 and 626 of the East Lyme Land Records.
7. Subject to being flowed or covered by water from the raising of the dam of Darrow's Pond by the owner thereof to a height of ten feet or more from the bed of the brook at the west end of the old flume now near the old road leading from Flanders to Chesterfield as set forth in said Warranty Deeds recorded in Volume 584, Pages 624 and 626 of the East Lyme Land Records.
8. Slope Easement from Niantic Real Estate Limited Liability Company to the Town of East Lyme dated August 14, 2003 and recorded August 15, 2003 in Volume 633, Page 341 of the East Lyme Land Records.
9. A Development and Open Space Covenant by Niantic Real Estate, LLC dated December 19, 2003 and recorded December 23, 2003 in Volume 653, Page 355 of the East Lyme Land Records.

10. An Access Easement by and between New England National LLC and Niantic Real Estate Limited Liability Company dated and recorded July 29, 2004 in Volume 678, Page 628 of the East Lyme Land Records.
11. A Mutual Use and Maintenance Easement Agreement by and between New England National LLC and Niantic Real Estate Limited Liability Company dated and recorded July 29, 2004 in Volume 678, Page 632 of the East Lyme Land Records.

Recorded November 27th 13
(AM)
10:10 PM [Signature]
East Lyme Town Clerk

OFFICIAL ABSENTEE BALLOT
EAST LYME, CONNECTICUT
BUDGET REFERENDUM
SEPTEMBER 1, 2011

INSTRUCTIONS TO VOTERS

To vote, fill in the oval completely next to your choice, like this .

Mark only one oval for each question. If more than one oval is marked, this ballot will be void.

QUESTION

"Shall the appropriation and bond authorization of \$4,235,000 for the acquisition of 301.55 acres of land on Mostowy Road in the Town of East Lyme be approved?"

YES

NO

APPROVED

1631-475