MUNICIPAL IMPROVEMENT
PLPZ 2020 00218

BOARD OF SELECTMEN and the
DIRECTOR OF ENVIRONMENTAL
AFFAIRS
Acquisition of an Easement

<table>
<thead>
<tr>
<th>LOCATION</th>
<th>836 Lake Avenue</th>
</tr>
</thead>
<tbody>
<tr>
<td>ZONE</td>
<td>RA-4</td>
</tr>
<tr>
<td>EASEMENT AREA</td>
<td>72.271 +/- acres</td>
</tr>
</tbody>
</table>

STAFF REPORT UPDATE:
The applicant was last before the Commission at their September 9, 2020 Meeting. At that time the Commission left the item open as the associated subdivision application, which would create this open space, was not acted on, to allow time for Dept. comments. Those comments have been provided. The following is the last staff report.

APPLICATION SUMMARY:
The request for Municipal Improvement (the “MI”) from the Board of Selectmen and the Director of Environmental Affairs, Patricia Sesto, is to gain approval from the Commission, to enter into an easement agreement to use and access the 72.271 +/- acres open space parcel, subject to the subdivision of land at 836 Lake Avenue (PLPZ 2020 00192.)

The referral of this MI was submitted to Planning and Zoning from the Board of Selectmen, on July 29, 2020.

COMMENTS AND RECOMMENDATIONS:
1. The subject land in which related to the easement has been conveyed as subdivision approval from the Commission is required to create said parcel. The Commission will need to act on the subdivision before acting on the MI.
2. If the Commission grants approval of the MI, the next step would be to place the matter on the call of the Representative Town Meeting for acceptance of the acquisition of the easement. If favorable action is then granted by the RTM, a notice of acceptance and the requisite documentation for said easement would be then filed on the Land Records.

PROPOSAL:
The Town has been working in partnership with the Greenwich Land Trust (the “GLT”) and Aquarion Water Company to agree on terms to acquire 72 acres of Class III watershed land owned by the Water Company. The result of the partnership is that the Town and the GLT will purchase this acreage of land, of which the GLT will be the title holder and the Town will hold the permanent Conservation Easement over said lands from the GLT. The GLT will be responsible for the on-going maintenance.
Title of the land cannot be had unless first, subdivision of the larger Aquarion parcel is approved by the Planning and Zoning Commission, creating the open space parcel, and therefore separate titles for the lot. Transfer of the 72-acres title, to the GLT, would then allow the GLT to execute this easement agreement with the Town, allowing access.

The open space is proposed to be named the “Conserve Pond Brook Preserve” and would provide opportunities to enjoy woodland trails in an area of the Town that is underserved by public park space. The easement represents an opportunity to develop additional parkland, in the “Back Country” and afford opportunity for the public to access undeveloped land that was formerly closed to the public.

**APPLICABLE REGULATIONS:**
This application was made pursuant to Section 99 of the Town Charter, which requires Municipal Improvement approval for the acquisition of land by the Town.
TO: Katie DeLuca

FROM: Fred Camillo

DATE: July 29, 2020

SUBJECT: Aquarion Property Purchase Municipal Improvement Referral

At a meeting of the Board of Selectmen on July 22, 2020, the Board unanimously voted to approve the referral to the Planning and Zoning Commission of the purchase of 72 acres of Aquarion land at 836 Lake Avenue in partnership with Greenwich Land Trust.

As you know, Section 99 of the Charter calls for a Municipal Improvement referral in conjunction with the purchase of real property. In this case, the Town is seeking to purchase the land in partnership with Greenwich Land Trust. Consequently, it is the opinion of the Board of Selectmen that this requires an MI Referral to your board under Section 99 of our Charter.

Thank you for taking this under consideration at your next Planning and Zoning Commission meeting.

cc: Patricia Sesto
Vincent Marino
Town of Greenwich
Planning & Zoning Department
Town Hall – 101 Field Point Road, Greenwich, CT 06830-2540
Phone: (203)622-7894 – Fax: (203)622-3795

MUNICIPAL IMPROVEMENT APPLICATION

Project Name: Converse Pond Brook Preserve

Applicant: (Department or Agency) First Selectman & Conservation Commission

Address: Town Hall, 101 Field Point Road, Greenwich, CT

Contact Person: Patricia Sesto

Telephone: 203-622-7736 Facsimile

Authorized Agent / Department Head Signature: Patricia Sesto

Date: 7-30-2020

If project involves real property, identify by

Location: 836 Lake Avenue

Tax Account Number(s): 10-1255 Zone(s): RA-41

Property Owner / Responsible Department: Aquarion Water Co / O&5 & Conservation

Previous related MI Numbers:

PROJECT DESCRIPTION:

See Attached

________________________
R. M. Farley (Town Mgr.)

Attach additional sheets, if necessary

Staff-assigned MI Number

Form PZ MI App

Staff-assigned SP Number
MEMORANDUM

TO: Planning and Zoning Commission

FROM: Patricia Sesto, Director of Environmental Affairs

DATE: July 30, 2020

RE: Request for a Municipal Improvement Approval for an Easement to Protect 72 acres owned by Aquarion Water Co. at 836 Lake Avenue

Over the course of the better part of the past year, the Town of Greenwich has been working in partnership with the Greenwich Land Trust and Aquarion Water Co. to agree on terms of acquisition and preservation of 72 acres of Class III land owned by Aquarion.

In short, the Town will pay 50% of the $2M below-market price, with GLT providing the other 50%. GLT will ultimately be the owner of the land and the Town will hold a conservation easement from the land trust. GLT will be responsible for the on-going maintenance. For your consideration, the draft easement provided.

The subject parcel is 100 acres bound to the east by Lake Avenue, Old Mill Road to the south, Cherry Valley Road to the west, and residential parcels to the north. The parcel consists of forest, Converse Pond, wetlands, and habitat for federal and state threatened species known to utilize the site. The property, under Aquarion ownership is classified as having Class I, II, and III watershed land. Aquarion has received approval from Connecticut Public Utility Regulatory Authority do dispose of their Class III lands, amounting to 80 acres. Aquarion is proposing to create two residential lots on a total of eight acres and sell the remaining 72 acres to Greenwich Land Trust and the Town. The Class I and II land, approximately 20 acres, will stay with Aquarion.

The preservation of 72 acres for open space with public access is consistent with the Conservation Commission’s 2015 Open Space Plan, which laid out a goal of protecting 21% of the town’s area as open space. The 2019 Plan of Conservation and Development sets a number of goals that acquiring open space addresses, but most directly section 4.5.b states the town should capitalize on opportunities to develop additional parkland, particularly in areas of the community that lack park access. The back
country, while far less dense in its development and it conveys a feeling of open space, has few opportunities for the public to access land. The undeveloped land that creates the bucolic experience is not open to the public.

The Conserve Pond Brook Preserve, as it is proposed to be named, would provide public opportunities to enjoy woodland trails in an area with only one other publicly accessible property, the Babcock Preserve. The proximity to the Babcock is an attribute in that one can access both parcels with relative ease, providing a more substantial outing.

I am looking forward to discussing how this opportunity meets with the goals of the Town.

CC: Fred Camillo, First Selectman
    Conservation Commission
    Ben Branyan, Town Administrator
    John Wetmore, Town Counsel
    Will Kies, Greenwich Land Trust
GRANT OF CONSERVATION EASEMENT

This is a grant of conservation easement (the “Grant”) by the Greenwich Land Trust (the “Grantor”), with principal office located at 370 Round Hill Road, Greenwich, Connecticut and the TOWN OF GREENWICH (the “Grantee”), a municipal corporation with offices located at 101 Field Point Road, Greenwich, CT 06830.

Recitals

WHEREAS, the Grantor owns the certain piece, parcel and tract of land (“Protected Property”) located in the town of Greenwich, County of Fairfield, and State of Connecticut shown on a certain map titled “__________________________,” prepared for __________________________ by __________________________, dated _________________________ and last revised __________________________, which map is on file in the office of the Clerk of the Town of Greenwich as numbered _______ (the “Survey”); and

WHEREAS, the preservation of the Protected Property will further its scenic enjoyment by the general public and will yield a significant public benefit; specifically, the Protected Property is situated on Cherry Valley Road, Old Mill Road, and Lake Avenue and is prominently visible from these public roads and is in close proximity to other open space owned by the Town which trails are available to the general public; and

WHEREAS, the Protected Property contains valued natural resources, including but not limited to watercourses, floodplains, wetlands, and forested uplands that serve to support desirable floral and faunal communities and provide scientific, educational, and aesthetic value in its present state as a natural area; and

WHEREAS, the Town of Greenwich and the Greenwich Land Trust have the common purpose of conserving the above described _________________ 72- acre Protected Property in perpetuity and further have the common goal that the Protected Property be acquired and preserved in its natural state and shall be open to public use in accordance with section 16-50(d) of the Connecticut General Statutes; and

WHEREAS, the preservation of the Protected Property in accordance with this Conservation Easement and C.G.S. 15-50(d) will provide resources for outdoor recreation by, and the education of, the general public, more specifically, the Protected Property will be used for public passive recreational trails; and
WHEREAS, the Town of Greenwich and the Greenwich Land Trust determined the Greenwich Land Trust is best suited to actively maintain and steward the desirable natural resources of the Protected Property; and

WHEREAS, the Town of Greenwich and the Greenwich Land Trust jointly and equally financed the acquisition of the property for preservation; and

WHEREAS, the Town of Greenwich desires a conservation easement be entered into between the parties hereto to ensure its investment and intentions are publicly known and codified via an easement recorded on the Greenwich Land Records restricting the use of the subject parcel shown and designated on the Survey as “Conservation Easement” (hereinafter referred to as the “Conservation Easement Area”); and

WHEREAS, the Parties acknowledge that the Conservation Easement Area is particularly valuable, as natural, scenic, open land, undisturbed by development; and

WHEREAS, the Grantor and Grantee wish to see the Conservation Restriction Area maintained in a naturally vegetated state; and

WHEREAS, the Grantor wishes through this grant to insure the Conservation Easement Area is preserved, and the Grantee is willing to undertake the enforcement of such preservation; and

WHEREAS, the purpose of this grant is to preserve the Conservation Easement Area in its natural, scenic and open condition in order to conserve and protect the animal and plant populations thereon and prevent the use or development of the Conservation Easement Area for any purpose, use, or in any manner which would conflict with the __________________ the Conservation Easement Area in its natural, scenic, and open condition;

NOW, THEREFORE, in consideration of One Dollar ($1.00) and other good and valuable consideration, in hand paid by the Grantee to the Grantor of which the receipt is hereby acknowledged and in consideration of the mutual promises and agreements contained herein, the Grantor hereby does give, grant, bargain and sell and convey unto Grantee, its successors and assigns a “Conservation Easement” as set forth in the Connecticut General Statutes, Section 47-42a through 47-42c, over the Conservation Easement Area. Said Conservation Easement shall be deemed to run with the land and to be binding upon the Grantor and its successors and assigns, the parties hereby agree as follows:
1. **Purposes.** The purposes of this Conservation Easement are to assure the Protected Property will be retained forever predominantly in its natural, scenic, forested, or open space condition and to prevent any use of the Protected Property that will significantly impair or interfere with the conservation values or interests of the Protected Property described above. The Grantor intends that this Conservation Easement will confine the use of the Protected Property to such activities as are consistent with the purpose of this Conservation Easement.

2. The prohibited uses and reserved rights for the Protected Property are based on the Grantor’s and Grantee’s mutual evaluation of the conservation values of the Protected Property and the Grantor’s and Grantee’s goal and objective to continue passive public use and enjoyment of the Protected Property while ensuring the conservation values of the Protected Property are protected in perpetuity. The use of the Conservation Easement Area shall be limited to flood control, conservation, park, and passive recreation purposes for use by the Grantor and the public.

3. **Prohibited Uses.** Any activity on or use of the Protected Property inconsistent with the purposes of this Conservation Easement is prohibited. The Protected Property may not be divided, partitioned, or subdivided. In addition, except as provided below or elsewhere in the Conservation Easement, and without limiting the generality of the foregoing, the following activities, acts, or uses are expressly prohibited on, over, or under the Protected Property.

   3.1. The Grantor may not charge a fee for public use of the Protected Property.
   3.2. The Grantor shall not erect or install any fencing or similar obstruction, including vegetative barriers that would materially interfere with the view of the Protected Property.
   3.3. The Grantor shall not materially alter the existing stone walls along the roadway or within the interior of the Protected Property, except to restack such walls in a form similar to their original condition and without the use of mortar.
   3.4. The construction or placement on the Conservation Easement Area of any building, vehicles, camping accommodations, signs, billboards or other advertising material, or fencing.
   3.5. Filling, excavating, mining, drilling, or removal or deposition of topsoil, sand, gravel, rocks, minerals, or other materials or change in the topography of the Conservation Easement Area in any manner.
   3.6. The cutting of trees or plants, except where said trees or plants are dangerous and pose danger or a safety issue, application of pesticides or disturbance or change in the natural habitat in any manner, with the exception that the Grantee may approve, in writing, forestry or other beneficial management practices consistent with the intent of this Easement.
   3.7. Removal of standing or fallen deadwood, except where such deadwood threatens the safety of the Grantor or public, and as approved in writing by the Grantee, which approval shall not be unreasonably withheld or delayed.
   3.8. Dumping of ashes, trash, garbage, brush, leaves or other unsightly, detrimental, or offensive material in the Conservation Easement Area.
   3.9. Any activity or use that is detrimental to drainage, flood control, water conservation, erosion control, soil conservation, wildlife, or habitat preservation.
3.10. The operation of snowmobiles, all-terrain vehicles, dirt bikes, motorcycles, or other detrimental recreational vehicles.

3.11. Changing of topography through placement of soils or other substances or material such as landfill or dredge spoils.

3.12. Any other use of the Protected Property which would be inconsistent with or have an adverse impact upon the Purpose of this Easement or other significant conservation interest is prohibited, unless such use or activity is deemed necessary by the Grantor and Grantee for the protection of the Purpose of this Conservation Easement, in which such use or activity shall be subject to notice to and reasonable approval by the Grantee and such approval shall not be unduly withheld.

4. **Grantor’s Reserved Rights.** The Grantor hereby reserves the following rights.

4.1. The right to undertake or continue any activity or use of the Protected Property not prohibited by this Conservation Easement and not inconsistent with the Purpose of the Conservation Easement.

4.2. The right to formulate and implement a stewardship plan in consultation with the Grantee. Such plan may include management of non-native invasive species, altering vegetation for habitat protection or enhancement, preservation of vistas, facilitating public passive recreational and/or educational use of the property, and/or forest management. The GLT will submit a list of its normal open space stewardship procedures with an outline specific to how the Area will be managed to the Director of the Department of Environmental Affairs (“Department”). The Stewardship Plan will be updated every 10 years and annual reports shall be provided to the Department by December 31st of each year. Written acceptance of the stewardship plan and any interim amendments by the Grantee shall be considered the Grantee’s approval pursuant to the requirements identified in section 3.

4.3. The right to access as necessary and manage storm-damaged vegetation after confirmed receipt by the Grantee indicating notice of intent to conduct such activities has been received.

4.4. The right to alter vegetation and topography to create on-site parking areas and their associated accessways. Such accommodation shall be designed and constructed to impose the least amount of disturbance to achieve the goal.

4.5. The right to use vehicles as reasonably necessary in connection with reserved rights, permitted uses, management, and protection of the Protected Property, the right to bring on the Protected Property and operate automobiles, light trucks, off-road vehicles, emergency and rescue vehicles, maintenance equipment, and other vehicles and equipment.

4.6. The right to install kiosks, educational or enforcement signage, wayfinding markers, and other similarly purposed signs.

4.7. The right to design and implement a trail system on the Protected Property consistent with a trails plan approved by the Grantee. Such approval shall not be unduly withheld. The trail plan may include benches, bridges with no footing, boardwalks, or other improvements to facilitate passive recreational use and preserve the natural resources of the Protected Property.
4.8. The right to conduct management plan for animal species, including lethal means, when such management is prudent for public safety, habitat protection/restoration, or other conservation goals. Such intended management shall be subject to approval by the Grantee, which shall not be unduly withheld or delayed.

4.9. In order to monitor compliance with the conditions of the Permits and the terms of this Grant, Grantor for itself, its successors, and assigns, grants to the Town of Greenwich the right to enter upon the Protected Property to perform any necessary inspections at reasonable times and provided the Grantee does not interfere with the use of the Property. In the event the Grantee determines the Grantor has failed to maintain the Conservation Easement Area in reasonable order and in compliance with the conditions of this Grant, the Grantee shall give written notice of said failure to the Grantor. The Grantor shall have thirty (30) days from the receipt of such notice to cure said failure. If the Grantor does not cure said failure within such thirty (30) day period, or in the event that the failure cannot practicably be cured within such thirty (30) day period, thereafter diligently pursue such cure, then the Grantee may proceed to cure same and charge the actual reasonable cost thereof to the Grantor, which cost the Grantor agrees to pay within ten (10) days after receiving notice of such cost from the Grantee. The parties acknowledge the Grantee shall have the right, but not obligation, to take actions necessary to cure any such failures, and further, that such actions include, but are not limited to, the right to enter upon the Conservation Easement Area to perform any necessary cure. Any contractors, employees, consultants, engineers, etc. performing work on the property on behalf of the Grantee, shall have sufficient insurance and said insurance shall be provided to Grantor prior to any work commencing, for the Grantor’s review and written approval. Any damage to the Property by the Grantee’s activities shall properly be repaired by the Grantee at its sole cost and expense and to the reasonable satisfaction of the GLT.

5. All notices under this Grant shall be effective when in writing and shall be deemed duly given when mailed by registered or certified mail, postage and registration charges prepaid, delivered by hand or delivered by a recognized overnight delivery service to the address of the parties listed above.

6. In the event the Grantor desires or requires the sale of the Protected Property:

6.1.1. The Grantee retains the right of first refusal to acquire the property for 50% of its fair market value, inclusive of all conservation restrictions associated with the Protected Property.

6.1.2. Conveyance of the Protected Property to a third party shall be subject to approval by the Grantee. Such approval shall not be unduly withheld or delayed.

6.1.3. The Protected Property shall not be used to satisfy zoning or other regulatory land use requirements to facilitate off-site development.

7. The Grantor agrees that the terms, conditions, restrictions, and purposes of this Grant will be inserted by it in any deed or other legal instrument by which the Grantor divests himself of either the fee simple title to or his possessory interest in the parcel.
8. If the Conservation Easement Area or any part thereof shall be taken by condemnation, this Conservation Easement shall terminate automatically as to that property taken, so that the Grantor of the parcel may be as fully compensated as thought this Conservation Easement had never been granted.

9. The Grantor agrees to pay any real estate taxes for assessments levied by competent authorities on the Protected Property.

10. In the event any party shall violate or attempt to violate this Conservation Easement, it shall be lawful for the Grantee to prosecute any proceedings at law or in equity against the party violating or attempting to violate this Conservation Easement. Furthermore, the party who shall succeed in the action to enforce this Conservation Easement at law also shall be entitled to recover all costs and expenses incurred in said enforcement action, including reasonable attorney’s fees.

11. This Grant shall not be amended after its recording on the Greenwich Land Records without the written approval of the parties and their successors and assigns, which amendment shall be recorded in the Greenwich Land Records.

TO HAVE AND TO HOLD the granted and bargained Conservation Easement, and its appurtenances, to the Grantee and to its successors and assigns forever, to its and the public’s use and benefit.

IN WITNESS WHEREOF, the Grantor has executed this Grant this __________ day of ________, 20__.

Signed, Sealed, and Delivered in the presence of:

_________________________________  ______________________________________
Grantor Signature                  Grantor Name Printed

_________________________________  ______________________________________
Grantee Signature                  Grantee Name Printed

STATE OF CONNECTICUT                )
) ss: TOWN OF GREENWICH
COUNTY OF FAIRFIELD

On this the _____ day of _________, 20___, before me, the undersigned officer, personally appeared ______________________ (Grantor), who personally acknowledged himself to be the owner of the subject property, being duly authorized to do so, executed the foregoing instrument for the purposes contained therein.

In witness whereof, I hereunto set my hand and official seal.

__________________________________
Commissioner of the Superior Court

On this the _____ day of _________, 20___, before me, the undersigned officer, personally appeared ______________________, who personally acknowledged himself to be the First Selectman, Town of Greenwich, being duly authorized to do so, executed the foregoing instrument for the purposes contained therein.

In witness whereof, I hereunto set my hand and official seal.

__________________________________
Commissioner of the Superior Court
NOTES:
2. Parcel is in Zone RA-4.
3. Property is shown on Parcel ID 10-1255
4. Parcel is in FIRM Zone AE, Zone X (Shaded) and Zone X (Unshaded) on Map No. 09001C0482F. Effective Date June 18, 2010.
5. Owner of Record: Aquarion Water Company of Connecticut
6. Underground utility, elevation and facility locations depicted and related herein have been compiled in part from record mapping supplied by the respective utility companies, governmental agencies, our own field work and field mapping. These locations must be considered approximate in nature. Underground utility locations are not complete and are subject to change at any time without notice. The underground utility, elevation and facility locations are not guaranteed to be complete or correct. CALL BEFORE YOU DIG 1-800-922-4455.
7. Photogrammetric Mapping provided by Golden Aerial Surveys Inc. Imagery (provided July 19, 2019).
9. Tree species code:
   - Ash As
   - Beech Be
   - Birch Bi
   - Cherry Ch
   - Oak Oa
   - Hickory Hck
   - Locust Lo
   - Maple Ma
   - Tulip Tp
NOTES:
2. Parcel is in Zone RA-4.
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5. Owner of Record: Aquarion Water Company of Connecticut
6. Underground utility, structure and facility locations depicted and noted herein have been compiled, in part, from record mapping supplied by the respective utility companies or governmental agencies. Planned development and final location of utility facilities, structure, and facilities are subject to change based on current or future development project. Ochman Associates, Inc. has not reviewed the above map for accuracy, and owner is responsible for its accuracy.

TREE SPECIES CODE:
- Ash As
- Beech Be
- Birch Bi
- Cherry Ch
- Oak Oa
- Hickory Hck
- Locust Lo
- Maple Ma
- Tulip Tp

Legend:
- Existing Contour
- Existing Spot Elevation
- Utility Line
- FEMA 100 Year Flood Zone
- FEMA 500 Year Flood Zone
- Watershed Division Line
- 100' Upland Review Area
- Wetland Flags for Class III Land Only

LOT 2
SIGHT DISTANCE /
PLAN & PROFILE

PREPARED FOR:
AQUARION WATER COMPANY
OF CONNECTICUT

836 LAKE AVENUE
GREENWICH, CONNECTICUT
JUNE 16, 2020

OCHMAN ASSOCIATES, INC.
CONSULTING ENGINEERS & SURVEYORS
P.O. BOX 76
EASTON, CONNECTICUT 06612
PHONE (203) 268-9194

SIGNATURE: J.D. Ochman
DATE: JUNE 16, 2020

SCALE: 1" = 2000'

ORIENTATION

-LOT 2-
SIGHT DISTANCE /
PLAN & PROFILE

- PREPARED FOR -
AQUARION WATER COMPANY
OF CONNECTICUT
836 LAKE AVENUE
GREENWICH, CONNECTICUT
JUNE 16, 2020

SHRINK MAP - 6/20/2020