

PROPERTY SMART AND GREEN

Judith I. Johannsen

In a place and time where gigantic fires rage out of control, where swollen rivers burst through levees and swallow up whole towns, and where Wizard of Oz-like tornadoes strafe unsuspecting communities, what can any one individual possibly do to save our land?

Take baby steps. Despite the fact that none of us mortals can command Mother Nature to stop doing what she does, there is a way for a person to preserve land so that generations to come may appreciate its simplicity and revel in its majesty.

Think "green". Globally, going "green" and trying to prevent deterioration of our planet is "in", and locally, too, there are opportunities to save land from being developed in ways that nibble away at a town's open space and compromise the natural habitat of wildlife areas of singular beauty and historical significance.

Some people might not mind going "green" but want to know what's in it for them. Well, if you're a property owner and not into group efforts, there is a way you can be property smart *and* green - you can place a *conservation easement* on your property (or just a portion of it). Such an easement allows a current owner and any future owner(s) to continue owning and using the land, subject to certain restrictions, and receive tax benefits as well.

When a person buys property, he receives title to the property through a deed. The deed grants the owner certain rights and privileges to use the property but can also allow others to come onto or use the property through easements. Commonplace easements include utility companies' right to enter onto someone's property to lay and maintain wires and cables, a neighbor's right to use a driveway or to cross a property to access a lake.

A conservation easement is different in that it can require land to *not* be developed and remain untouched to protect the plants and animals that live there and/or to preserve a famous site or open space for scenic enjoyment and recreation.

So, if conservation easements are such good things, why did a Litchfield county court last fall find a clause in a deed that preserved a small portion of a larger parcel for conservation purposes unreasonable and unenforceable in conveying title?

Here's the story. The owners/sellers were members of a family that had owned a large tract of land that adjoined a lake, and when they all decided to sell off a portion of the property, they wanted two things. First, they wanted to preserve the property in as natural a state as possible by prohibiting construction or placement of any buildings on the property, except for small non-residential structures to be used for recreation and/or water and septic installations. Secondly, they wanted this preservation restriction to run with the land - which meant forever.

The court determined that this family's wishes did not fit into the recognized types of restrictions and that a restriction will not run with the land just because the sellers want it to, and since there was no defined period of time for this easement to exist and no one had been appointed to enforce the easement, the intended conservation easement was deemed unreasonable and, therefore, unenforceable.

So, despite the sellers' good intentions and best efforts to create a conservation easement to do what they thought was the right and good thing to do, the court reinforced what Kermit the Frog knew all along – it's not easy being green.

Environmentalists' mews of previous decades have become today's loud roar to protect the earth and its natural resources. Conservation easements, which can help to do exactly that, can be a thing of beauty as they can preserve what's naturally there, while also allowing a tax break for the owner.

Judith I. Johannsen is Assistant Counsel for the Connecticut Association of Realtors®, Inc.

Connecticut Association of REALTORS®, Inc. is Connecticut's largest professional trade association representing over 19,000 real estate professionals engaged in all aspects of the real estate business. Founded in 1920, the Connecticut Association of REALTORS®, Inc. is dedicated to enhancing the ability of its members to conduct their business successfully while maintaining the preservation of private property rights. Use of the term "REALTOR®" is exclusive to the members of the REALTOR® Association and signifies their allegiance to a strict Code of Ethics.