

Town Board Minutes
Special Meeting
North Castle Town Board
Town of North Castle
15 Bedford Road
Armonk, New York
on
November 3, 2014

At 6:05 p.m., Councilman Berra moved, seconded by Councilman Reiter, to call a special meeting to order to consider authorization for the Supervisor to execute a Conservation Easement to the Town utilizing open space funds in connection with the purchase of the 73 acre Levene property by the Mianus River Gorge. The following persons were present:

Supervisor	Michael J. Schiliro
Councilmen	Barbara DiGiacinto Barry Reiter José Berra
Town Clerk	Anne Curran
Town Administrator	Joan Goldberg

Councilman Stephen D'Angelo was absent.

Supervisor Schiliro explained that ten years ago the Town approved a \$3 million bond referendum to acquire open space. Mr. Schiliro said that tonight the Board was considering the Conservation Easement to the Town and the utilization of open space funds, due to expire today, in connection with the purchase of the Levene property by the Mianus River Gorge.

Councilman DiGiacinto moved, seconded by Councilman Berra, receipt of memorandum of recommendations from Kerri Kazak, Chairman Open Space Committee, and John Fava, Chairman Conservation Board, in support of the Conservation Easement and utilization of open space funds.

The roll call vote was as follows:

Ayes: Councilmen DiGiacinto, Reiter, Berra, Supervisor Schiliro

Noes: None

Absent: Councilman D'Angelo

Presentations were made by Rod Christie, Executive Director Mianus River Gorge, Kerri Kazak, Chairman Open Space Committee, and John Fava, Chairman Conservation Board. Ms. Kazak and Mr. Fava urged the Town to act on the opportunity for open space conservation and the protection of important water resources.

Note: Comments are recorded in the Town Board Minutes of November 5, 2014.

Supervisor Schiliro thanked all those involved, especially the Open Space Committee, which he noted has been looking for such parcels and is very selective regarding the use of open space funds, involving a great deal of work and study. The Supervisor said this is an important piece of property and said he agreed with the recommendation to participate in the purchase of the property to preserve open space.

Councilmen Berra, Reiter, and DiGiacinto commended the work done to preserve open space.

Councilman Reiter moved, seconded by Councilman DiGiacinto, authorization for the Supervisor to execute a Conservation Easement to the Town and approval for the Town to utilize \$500,000 in open space funds in connection with the purchase of the 73 acre Levene property by the Mianus River Gorge.

The roll call vote was as follows:

Ayes: Councilmen DiGiacinto, Reiter, Berra, Supervisor Schiliro

Noes: None

Absent: Councilman D'Angelo

The Special Meeting was closed at 6:45 pm on a motion made by Councilman DiGiacinto, and seconded by Councilman Berra.

The transcript of the Conservation Easement follows at the end of these minutes. The signed Conservation Easement is on file in the Town Clerk's Office.

Anne Curran, Town Clerk

Dated: December 17, 2014

CONSERVATION EASEMENT

This conservation easement agreement is made this ___ day of _____, 2014, by and between the Mianus River Gorge, Inc., "Gibb House," 167 Mianus River Road, Bedford, New York 10506, hereinafter referred to as the "GRANTOR", and the Town of North Castle, 15 Bedford Rd, Armonk, NY 10504, hereinafter referred to as the "GRANTEE".

WHEREAS the GRANTOR, is a publicly supported tax exempt nonprofit organization, and is a qualified organization under Sections 501(c)(3), 509(a)(1), 170(b)(1)(A)(vi) and 170(h) of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder (the "Code"), and is a New York not-for-profit corporation within the meaning of Article 49, Title 3, of the Environmental Conservation Law of the State of New York, organized for the purpose, among others, of conserving and preserving the agricultural, forest and open space resources of Westchester County, and is owner in fee of one parcel of real property located in the Town of North Castle, Westchester County, New York known and designated on the tax map of the Town of North Castle, New York as Section 95.04, Block 2, Lot 27, being the same as that Property conveyed to GRANTOR by deed on _____, and recorded in the Land Records of the Westchester County Clerk on _____ at Control Number _____, comprised of approximately 73.08 acres and a portion of which is to be restricted by a conservation easement, more particularly described in "EXHIBIT A" attached hereto and incorporated herein by reference, hereinafter known as the "Property" or "Protected Property;" and;

WHEREAS the GRANTEE is a municipal corporation organized under the laws of the State of New York and a "public body" as defined in Section 2 of the New York General Municipal Law and therefore a qualified entity authorized under Section 49-0305 of the New York Environmental Conservation Law to hold a conservation easement under the laws of the State of New York, and an entity under Section 170(c)(1) of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder (the "Code"), and is thereby qualified to be the grantee of conservation easements; and

WHEREAS the Property consists of a river, stream, wetlands, wetland buffers, steep slopes and adjacent undeveloped land, substantial portions of which have ecological, scientific, educational and aesthetic value in their present state as natural areas which have not been subjected to development or exploitation, and are more particularly and fully bounded and described as the "Property" on "EXHIBIT A" attached hereto and made a part hereof (said "Property" is hereinafter referred to as the "Property" or the "Protected Property"); and is a natural area which provides significant habitat for fish, wildlife and plants and has a substantial value as a natural and scenic resource, for its wetland and ecological character, and for the protection it offers to Piping Brook, a tributary to the Mianus River, the Mianus River watershed, the Mianus River Gorge Preserve, and the ecological viability of the adjoining nature and conservation preserves of The Nature Conservancy and the GRANTOR, and,

WHEREAS excluded from the Protected Property on this parcel is a lot of approximately 5 acres, or the minimum acreage needed to satisfy the North Castle zoning regulations for a minimum lot size, surrounding the existing cottage and including any existing structures, driveway and infrastructure necessary to the functioning of the cottage, which if approved by the Town of North Castle could be subdivided into a separate building lot,

WHEREAS, preservation of the Protected Property is for the scenic enjoyment of the general public and will yield a significant public benefit; and,

WHEREAS the conservation values of the property are documented in a Baseline Data Report dated _____ which is on file in the office of the GRANTOR and the GRANTEE, and is incorporated herein by reference, and which includes an inventory of the relevant conservation values, maps, photographs, reports and other documents that the parties agree provide an accurate representation of the Property at the time of the execution of this conservation easement, and which is intended to provide objective baseline information for purposes of future monitoring and enforcement; and

WHEREAS the GRANTOR desires to donate a conservation easement and to convey to GRANTEE the right to preserve and protect the conservation values described herein by encumbering the Protected Property with a conservation easement pursuant to the provisions of New York Conservation Law, Article 49, Title 3; and

WHEREAS the GRANTEE agrees to accept this conservation easement and to honor the intentions of the GRANTOR as stated herein and to preserve and protect the Property in perpetuity according to the terms of this easement for the benefit of this and future generations.

NOW THEREFORE, in consideration of the foregoing and the mutual covenants terms, conditions, and restrictions contained herein, the GRANTOR hereby voluntarily grants and conveys to GRANTEE a conservation easement in perpetuity over the Property of the nature and character and to the extent set forth herein.

1. Purpose. It is the purpose of this easement to protect and preserve the Property, its ecological functioning, its habitat values for native species, its natural and scenic resource values, its wetlands and ecological character, its protection of the Piping Brook, a tributary to the Mianus River, the Mianus River watershed, the Mianus River Gorge Preserve, and the ecological viability of the adjoining nature and conservation preserves of The Nature Conservancy and the GRANTOR in its natural state in perpetuity. This easement shall prevent any use of the property that will impair or interfere with the conservation values of the property by restricting use of the property as provided herein.

2. Prohibited Uses and Restrictions. The following acts and uses are expressly forbidden on, above, or under the Protected Property:

2.1 There shall be no further subdivision of the Protected Property for residential or commercial uses.

2.2 There shall be no construction or maintenance of any buildings, camping accommodations or mobile homes, signs, billboards or other advertising material, or other structures on the Protected Property.

2.3 There shall be no ditching, draining, diking, filling, excavating, dredging, mining or drilling, removal of topsoil, sand, gravel, rock, minerals or other materials (except as may be necessary to maintain the Protected Property in its condition as at the date of this grant) nor any building of roads or change in the topography of the land in any manner on the Protected Property.

2.4 Without the prior written express consent of both the GRANTOR and the GRANTEE and except as provided in Article 3 hereof, there shall be no removal, destruction or cutting of live trees or plants, planting of trees or plants, use of fertilizers, use of biocides, herbicides or pesticides, introduction of non-native animals, grazing of domestic animals, or disturbance or change in the natural habitat in any manner on the Protected Property.

2.5 Without the prior written express consent of both the GRANTOR and the GRANTEE, there shall be no dumping of ashes, trash, garbage, grass clippings or other vegetative debris or waste, or other unsightly or offensive material, hazardous substance, or toxic waste; nor any placement of radio, television or cellular telephone towers; nor any placement of aboveground or underground storage tanks, pipes, pipelines, cables, conduits or other utilities in, on, or under the Protected Property; there shall be no changing of the topography through the placing of soil or other substance

or material such as land fill or dredging spoils; nor shall activities be conducted on the Protected Property or adjacent property which could cause erosion or siltation on the Protected Property.

2.6 Without the prior written express consent of both the GRANTOR and the GRANTEE, there shall be no manipulation or alteration of natural water courses, pond shores, marshes, wetlands or other water bodies, nor shall there be activities conducted on the Protected Property or adjacent property which would be detrimental to the ecology or natural habitat of the Protected Property, detrimental to water purity, or which could alter natural water level and/or flow on the Protected Property.

2.7 Except in connection with GRANTOR's and GRANTEE's rights and activities under this Conservation Easement with regard to the Protected Property, there shall be no operation of snowmobiles, dune buggies, motorcycles, all-terrain vehicles, or any other types of motorized vehicles on the Protected Property.

2.8 Prior to undertaking any changes in the use of the Protected Property and the adjacent property, the GRANTOR shall consult with the GRANTEE regarding the proposed changes to determine the effect of such changes on the natural values being protected on the Protected Property.

2.9 The GRANTOR agrees that express reference to this document will be inserted by it or its successors, personal representatives or assigns in any subsequent deed or other legal instrument by which the GRANTOR or its successors, personal representatives or assigns divest(s) himself or themselves of either the fee simple title to or his or their possessory interest in the Protected Property.

3. GRANTOR'S RESERVED RIGHTS:

NEVERTHELESS, and notwithstanding any of the foregoing provisions to the contrary and as expressly limited herein, the GRANTOR reserves for itself and its heirs, successors and assigns the following reserved rights, without prior notice to the GRANTEE; provided, however, that the exercise of such rights will not interfere with or have an adverse impact on the essential natural, open and scenic quality of or the conservation interests associated with the Protected Property:

3.1 The right to use, monitor, survey and inspect the property for all purposes not inconsistent with this grant.

3.2 The right to sell give or otherwise convey the Protected Property or any portion or portions of the Protected Property, provided such conveyance is subject to the terms of this Easement.

3.3 The right to:

- A. cut, prune or remove non-native, exotic invasive plant species; and
- B. plant native plant species.

3.4 The right to manage the protected property in a similar fashion as other properties of the Mianus River Gorge Preserve to include such activities as:

- A. Deer population control
- B. Building of walking trails for public access
- C Ecological Research and Education activities

3.5 The right to control access to the property except those access rights specifically granted to GRANTEE for purposes of monitoring compliance with this easement; and, no right of access to the general public to any portion of the Property is conveyed by this easement.

3.6 Notwithstanding any other restriction contained herein, the GRANTOR or the GRANTEE may take such actions with respect to the Property as are necessary to protect the health and safety of the public and the persons using the Property; provided that if any such action is contrary to a restriction contained herein, the action shall be limited to the minimum variation necessary to afford the required protection.

4. Rights Conveyed to GRANTEE. To accomplish the purposes of this easement, the following rights are conveyed to the GRANTEE by this easement.

4.1 The right to preserve and protect the conservation values of the Property.

4.2 The right to enter upon the Property at reasonable times in order to monitor compliance and otherwise enforce the terms of this easement. GRANTEE shall provide GRANTOR or GRANTOR's successors, reasonable notice of such entry unless GRANTEE determines that immediate entry is required to prevent, terminate or mitigate violation of this easement.

4.3 The right to prevent any activity on, incursion into, or use of the property that is inconsistent with the purposes of this easement, and to require the restoration of such areas or features of the property that are damaged by any inconsistent activity or use pursuant to the remedies set forth in section 6 herein.

5. Extinguishment of Development Rights. Except as specifically outlined concerning the establishment by subdivision of the approximately 5 acre lot associated with the cottage outside of this conservation easement, all rights to further subdivision or development of the Protected Property are hereby extinguished.

6. Enforcement.

7.1 **Notice.** If GRANTEE determines that a violation of this easement has occurred or is threatened, GRANTEE shall give written notice to GRANTOR of such violation and demand that corrective action sufficient to cure the violation be taken. Where the violation involves injury to the property resulting from any use inconsistent with the terms or the purpose of this conservation easement, GRANTEE shall demand that GRANTOR restore the Property to its prior condition in accordance with a plan approved by the GRANTEE.

6.2 **Injunctive Relief.** If GRANTOR fails to cure the violation within 30 days after receipt of notice of a violation from GRANTEE, or, where the violation cannot reasonably be cured within a 30 day period, GRANTOR fails to begin curing such violation within a 30 day period, or GRANTOR fails to diligently continue to cure such violation until it is cured, GRANTEE may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this easement, to enjoin the violation by temporary or permanent injunction, and to require the restoration of the property to the condition that existed prior to any such injury.

6.3 **Damages.** GRANTEE shall be entitled to recover damages for a violation of the terms of this easement or for injury to any of the conservation values protected by this easement, including, without limitation, damages for loss of scenic, aesthetic, or environmental values. Without limiting GRANTOR's liability therefore, GRANTEE may, in its sole discretion, apply any damages recovered to the costs of undertaking any corrective action on the Property.

6.4 **Emergency Enforcement.** If GRANTEE, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation values of the Property, GRANTEE may pursue its remedies under Section 4 and 6 hereof without prior notice to GRANTORS or without waiting for the period for cure to expire.

6.5 **Costs of Enforcement.** All reasonable costs of enforcing the terms of this easement against GRANTOR, including but not limited to the costs and expenses of legal action, reasonable attorney's fees, and any costs involved in the restoration of the Property resulting from GRANTOR's violation of the terms of this easement, shall be borne by GRANTOR unless GRANTOR ultimately prevails in judicial enforcement, in which case each party shall bear its own costs.

6.6 **Forbearance.** Forbearance or delay by GRANTEE in the exercise of any of its rights to enforce this easement or to exercise any right granted to it under this easement shall not be deemed a waiver of such rights or of any of the terms of the easement. GRANTORS hereby waive any defense of laches, estoppel or prescription.

6.7 **Acts Beyond GRANTOR's Control.** GRANTEE shall have no cause of action under this easement against GRANTOR for injury or damage to the property which is beyond GRANTOR's control, including, without limitation, flood, fire, wind, storms, or earth movement, or from any prudent action taken by GRANTOR, under emergency conditions, to prevent, abate or mitigate significant injury to the Property or adjacent properties from such causes.

7. Notices and Approvals. GRANTOR agrees to give GRANTEE written notice before exercising any reserved right, the exercise of which may have an adverse impact on the conservation interests of this conservation easement. GRANTOR further agrees to notify GRANTEE of any conveyance, lease or transfer of the Property, such notice to be given in writing at least twenty (20) days in advance of such conveyance, lease or transfer. The failure to give such notice shall not, however, invalidate the conveyance, lease or transfer. When GRANTEE's or GRANTOR's approval is required for any action or activity allowed by this easement to be taken only with approval, such approval shall be in writing and signed by both parties to this easement agreement or their successors. Any notice required by this easement shall be deemed given when received or three days after being mailed by certified or registered mail, return receipt requested, postage prepaid, properly addressed as follows: (a) if to GRANTEE, at address set forth above; (b) if to GRANTOR, at the address set forth above; (c) if to any subsequent owner, at the address provided by notice to GRANTEE of transfer of the property as required by this paragraph. Any party may change the address to which notices are to be sent to him, her or it by duly giving notice pursuant to this paragraph.

8. Costs and Liabilities. GRANTOR shall retain all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including the maintenance of adequate liability insurance coverage. GRANTOR shall name GRANTEE as an "additional insured" under said liability insurance policy or policies specifically relating to the subject property. GRANTOR shall remain solely responsible for obtaining any applicable governmental permits and approvals for any construction or other activity or use permitted by this easement, and all such construction and other such activity or use shall be undertaken in accordance with all applicable federal, state, and local laws, regulations, and requirements. Other than events covered in section 6.7 above or for other acts or omissions beyond GRANTOR's control or for acts or omissions of GRANTEE, GRANTOR shall hold GRANTEE harmless against any and all claims and shall indemnify and defend GRANTEE against any claims or actions brought against GRANTEE in connection with subject property or its use.

9. Amendment. This conservation easement may be amended upon the written consent of GRANTEE and GRANTOR; provided that no amendment may alter the restrictions on use or permitted structures, nor shall it allow subdivision that is inconsistent with the purposes of this conservation easement, nor shall it in any way limit the perpetual duration of this easement. Any such amendment, variance or waiver shall be consistent with the basic purposes of this conservation easement and shall comply with Article 49, Title 3, of the Environmental Conservation Law. Any such amendment, variance or waiver that does not comply with Article 49 shall be void and of no force or effect. Any amendment shall be in writing and shall be recorded in the official records of the County of Westchester, State of New York.

10. Recordation. GRANTOR shall record this instrument in a timely fashion in the official records of Westchester County, New York State, and may re-record it at any time as may be required to preserve its rights in this easement. GRANTOR shall provide a photocopy of the recorded instrument when it is received from the office of the Westchester County Clerk.

11. Assignment.

11.1 GRANTEE's rights and obligations under this conservation easement may be assigned only with the written permission of the GRANTOR or owner of the Property, and only to an organization that is a not-for-profit conservation corporation or other entity authorized to take title to a conservation easement under New York Environmental Conservation Law, Article 49, Title 3, and which agrees to continue to carry out the conservation purposes of this conservation easement. Any assignee other than a governmental unit must be an entity able to enforce this conservation easement, having purposes similar to those of GRANTEE and which encompass those of this conservation easement.

11.2 GRANTOR's rights and obligations under this conservation easement may be assigned only with the written permission of the GRANTEE or owner of the Property, and only to an organization that is a not-for-profit conservation corporation or other entity authorized to take title to a conservation easement under New York Environmental Conservation Law, Article 49, Title 3, and which agrees to continue to carry out the conservation purposes of this conservation easement. Any assignee other than a governmental unit must be an entity able to enforce this conservation easement,

having purposes similar to those of GRANTOR and which encompass those of this conservation easement.

11.4 The permission required in sections 11.1 and 11.2 shall not be unreasonably withheld.

12. Subsequent transfers. Any subsequent conveyance of any interest in the Property, including, without limitation, transfer, lease or mortgage, shall be subject to this conservation easement, and any deed, lease, mortgage or other instrument evidencing or effecting such conveyance shall contain language which provides that the conveyance, lease, mortgage or other conveyance is subject to a Conservation Easement which runs with the land and which was granted to the Town of North Castle, New York, by instrument dated *insert date of this conservation easement*, and recorded in the office of the Clerk of Westchester County, and shall note the Control Number by which the Clerk identifies this easement. The failure to include such language in any deed or instrument shall not affect the validity or enforceability of this conservation easement.

13. Binding Effect. The provisions of this conservation easement shall run with the Property in perpetuity and shall bind and be enforceable against the GRANTOR and all future owners and any party entitled to possession or use of the Property or any portion thereof while such party is the owner or entitled to possession or use thereof. As used in this conservation easement, the term "owner" includes the owner of any beneficial equitable interest in the Property or any portion thereof; the term "GRANTOR" includes the original GRANTOR, his, her, its or their heirs, successors and assigns, all future owners of all or any portion of the Property, and any party entitled to possession or use thereof; and the term "GRANTEE" includes the original GRANTEE and its successors and assigns. Notwithstanding the foregoing, upon any transfer of title, the transferor shall cease being a GRANTOR or owner for purposes of this conservation easement and shall have no further responsibility or liability hereunder for acts done or conditions arising thereafter, but the transferor shall remain liable for earlier acts and conditions. The obligations imposed on GRANTOR by this agreement shall be joint and several.

14. No Extinguishment Through Merger. GRANTOR and GRANTEE herein agree that should the GRANTEE (or any successor in interest to the GRANTEE) come to own all or a portion of the fee interest subject to this conservation easement, (i) said owner shall observe and be bound by the obligations and restrictions imposed upon the conservation area by this conservation easement, (ii) this easement shall not be extinguished through the doctrine of merger in whole or in part in view of the public interest in its enforcement, and (iii) said owner shall as promptly as practicable assign the GRANTEE interest in this easement of record to another appropriate holder.

15. Further Acts. Each party shall perform any further acts and execute and deliver any documents, including amendments to this conservation easement, which may be reasonably necessary to carry out its provisions or which are necessary to qualify this instrument as a conservation easement under Article 49, Title 3, of the Conservation Law or any regulations promulgated pursuant.

16. Certificate of Compliance. GRANTEE shall provide GRANTOR, within 20 days of written request therefore, a written notice stating whether the Property is in compliance with the terms of the conservation easement, and if GRANTEE alleges it is not in compliance, stating the substance of the alleged violation and the proposed remedy therefore.

17. Severability. Invalidation of any provision of this conservation easement by court judgment, order, statute or otherwise shall not affect any other provisions, which shall be and remain in force and effect.

18. Authorization. GRANTEE warrants that acceptance of this conservation easement has been duly authorized by the GRANTEE's Town Board.