

**LAND TRUST LAW  
SCHOOL 2024  
7th Ed. –  
Encroachments,  
Dams and Facility  
Siting**

**Keith Ainsworth, Esq.**  
Assisted by CHatGPT and CoPilot Designer



## WHAT MAKES A LAND TRUST SO UNIQUE??

Statute of  
Charitable  
Uses Conn.  
Gen. Stat. §  
47-2

- All estates granted for the maintenance of the ministry of the gospel, or of schools of learning, or for the relief of the poor, or for the preservation, care and maintenance of any cemetery, cemetery lot or monuments thereon, or for any other public and charitable use, shall forever remain to the uses to which they were granted, according to the true intent and meaning of the grantor, and to no other use whatever.
- aka “Statute of 1702”, first adopted in 1684

## THE “LEVEL PLAYING FIELD”

### KNOW YOUR RIGHTS

- ▶ **Land Trusts Enjoy Special Status and Unique Protections**
- ▶ **Adverse Possession Does Not Run Against LT's**
- ▶ **Multiple Damages for Harm to LT Property (CGS 52-560a)**
- ▶ **Attorney General Can Intervene (CGS 47-42e)**
- ▶ **Non-Profit Tax Deductions for Consultants and Professionals Who Donate Time and Money**



# Statutory Tools



## **ANTI-SLAPP SUIT C.G.S. §52-196A –**

**EARLY MOTION TO DISMISS, AWARD OF ATTY FEES/COSTS WHERE PERSON IS EXERCISING FREE SPEECH IN ENVIRONMENTAL FORUM**



## **ENCROACHMENT STATUTE CONN.GEN.STAT. §52-560A –**

**RESTORATION OR COST OF RESTORATION INCL. MANAGEMENT FEES, ATTORNEY FEES, COSTS, EQUITABLE RELIEF & PENALTY OF 5X RESTORATION COST OR 5K STATUTORY DAMAGES.**



## **PARK REPLACEMENT STATUTE - C.G.S. §7-131N**

**TAKING OF PARK OR OPEN SPACE MUST PROVIDE COMPARABLE REPLACEMENT IN VALUE AND SIZE AND GIVE NOTICE AND HOLD PUBLIC HEARING.**



## **CT ENVIRONMENTAL PROTECTION ACT – §22A-16 –**

**INJUNCTION FOR RESTORATION – ATTORNEY'S FEES AND COSTS**



## **RUNNING BAMBOO--§22A-381E(F)-**

**PROHIBITS RUNNING BAMBOO FROM CROSSING BOUNDARIES AND WITHIN 40FT OF PROPERTY LINE; STATUTORY NUISANCE \$100/DAY FINE, PLUS DAMAGES FOR REMOVAL**

Siting Cell  
Towers, Wind  
Turbines and  
Solar Farms  
on Land Trust  
Property

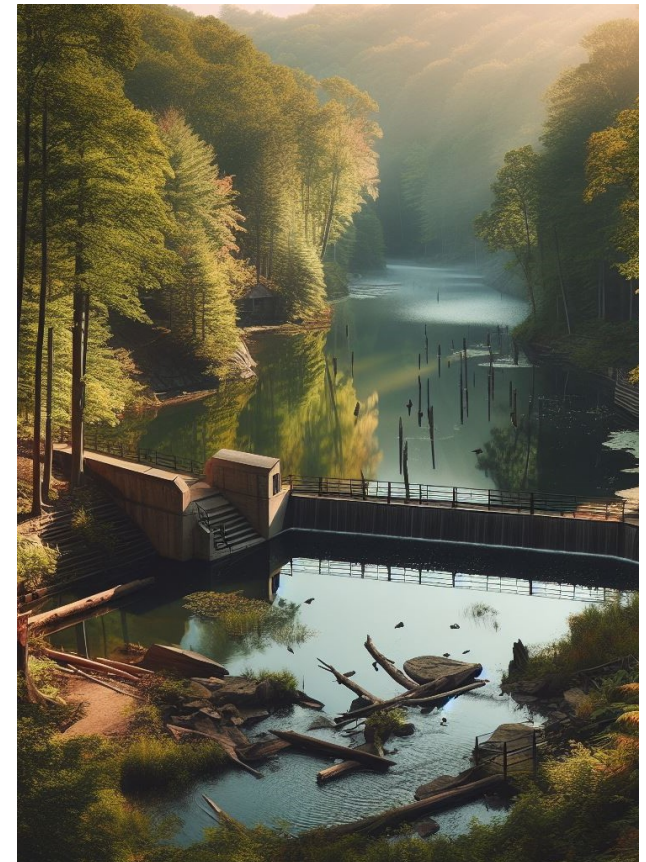




# Accepting Dams and the Dam Responsibilities

---

- The [Dam Safety Statutes](#) were last substantially revised by Public Act 2013-197, which authorized changes regarding Emergency Action Plans (EAPs) and inspection requirements: *Dam owners in the State of Connecticut are now responsible for hiring a consultant to conduct regular dam inspections.*
- *The owners of high hazard (Class C) and significant hazard (Class B) dams must file an EAP every two years.*
- The Dam Safety regulations were most recently revised with an effective date of February 3, 2016. [22a-409: Definitions, Registration, Classification, Inspections](#)
- [22a-411: Definitions, Requirements for Emergency Action Plans](#)



# Conn.Gen.Stat. §22a-411 – General Permits

---

- The commissioner may issue a general permit for any minor activity regulated under sections 22a-401 to 22a-410, inclusive, except for any activity covered by an individual permit, if the commissioner determines that such activity would cause minimal environmental effects when conducted separately and would cause only minimal cumulative environmental effects. Such activities may include **routine maintenance and routine repair** of any dam, dike, reservoir or other similar structure **or the removal of any dam to improve fish passage or to provide other ecological benefits.**



# Tree Liability..... In a Nutshell

- Trees on private property do not have to be pruned or removed
- Land Owners/LT's not liable for fallen tree
- Exception – If you do something to make it fall, you can be liable for your actions
- **SB1061 --AN ACT CONCERNING A PROPERTY OWNER'S LIABILITY FOR THE EXPENSES OF REMOVING A FALLEN TREE OR TREE LIMB. (DID NOT PASS)**
- **7<sup>th</sup> Time's a Charm**





Tree Case Law –  
It Depends Who  
You Ask  
Maybe we *are*  
liable?

***Heidi Cordeiro v. Rockville General Hospital, Inc. et al.*** TTD-CV-07-5001627-S

Court went through mental gymnastics to find that

**“...it is widely held, in modern cases, that a tree owner in an urban setting is subject to liability**

**....only if he or she had actual or constructive notice of a dangerous condition in the tree.”**

**Cited to *McDermott v. Calvary Baptist Church* , 263 Conn. 378,**

**388, 819 A.2d 795 (2003).” “plaintiff bore the burden of establishing that there were visible signs of decay or weakness of structure . . . and that the church failed to observe . . . but the reasonable care would have resulted in these signs being seen.”**

Not the majority law in CT and relied on cases from other states.

Lesson: Bad lawyering makes bad law. Defense attorney dropped the ball.

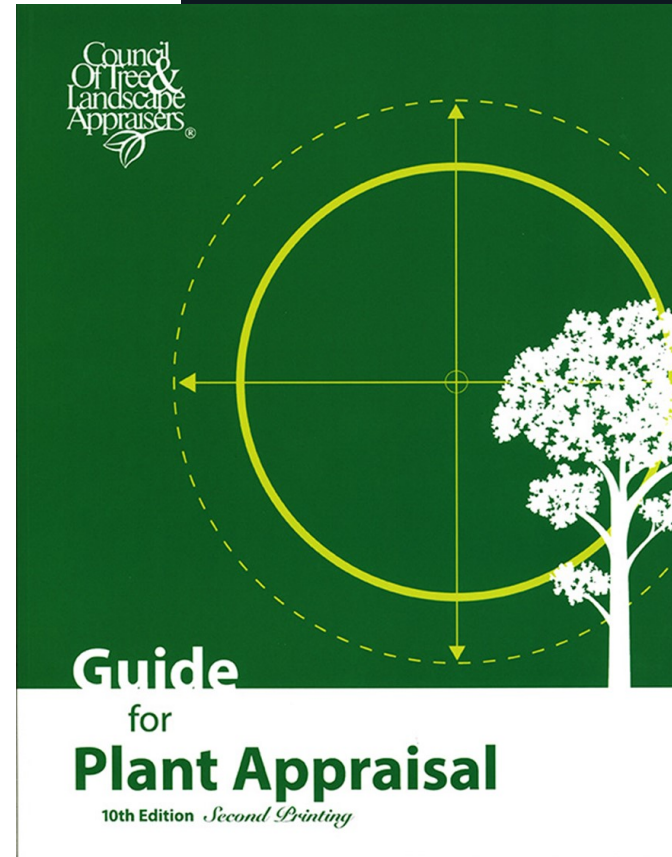
# Encroachments

## Tree Cutting – A Perennial Problem

Encroachment Statute Conn.Gen.Stat. §52-560a - court can award restoration or cost of restoration incl. management fees, attorney fees, costs, equitable relief & penalty of 5x restoration cost or 5K statutory damages. Attorney General can also enforce.

(d) In determining the amount of the award, the court shall consider the willfulness of the violation, the extent of damage done to natural resources, if any, the appraised value of any trees or shrubs cut, damaged, or carried away as determined in accordance with the latest revision of The Guide for Plant Appraisal, as published by the International Society of Arboriculture, Urbana, Illinois, or a succeeding publisher, any economic gain realized by the violator and any other relevant factors.

*Guide to Plant Appraisal*, 10<sup>th</sup> ed (3<sup>rd</sup> print) 2018.



REPEAT  
after  
me....

Baseline  
Baseline  
Baseline  
Baseline  
Baseline  
Baseline

## PREVENTING/ADDRESSING ENCROACHMENTS

**Make sure you have excellent BASELINE documentation.**

**Conduct regular monitoring of preserves and easements.**

**Measured or 'Stepped' Response**

**Develop written policies and procedures for responding to potential encroachments...(*Grovenburg* says can be oral policies, but don't go there)**

**Land Trusts Hold  
Property In  
Perpetuity But  
They Still Need to  
Move PROMPTLY**

**Warning: The Statute of Limitations**

**Time to File an Tort Claim – 2 years (CGS sec. 52-584)**

**Encroachments are Torts (e.g. - tree cutting, debris, walls)**

**Standards & Practices – Inspect Easements and Fee Properties Every Year at least every 1.5 years**

**Continuing Torts can Extend the Time Limit, but only if some activity or occupation is still occurring (*Rickel v. Komaromi*)**

**Permanent Trespass v. Continuing Trespass**



**TALES FROM  
THE LISTSERV  
Land Trusts on  
the Front Lines**





# Land Trust v. New Owner With a Chainsaw

Land Trust in Northwest Connecticut Owns Property with Conservation Restriction

New Neighbor clears ½ acre --- 617 trees/shrubs (“I thought we had permission...”)

LT hires forester who estimates restoration \$440k-\$609k

LT hires another forester/arborist estimates \$59k - \$65k

Encroacher experts quote

Pirone’s Tree Maintenance 7th Edition (the essential reference for arborists, nurserymen and landscape architects) the value of the trees on any given property typically should not exceed more than 15% of the property value

Encroacher estimate \$16k to \$40k restoration.

NONE OF THE EXPERTS USED THE GUIDE TO PLANT APPRAISAL

Case settles – case withdrawn (\$50k)

**LESSON:** USE THE FORMULA!  
The Guide to Plant Appraisal is the statutory standard

# ***Land Trust v. New Owner With a Chainsaw Case #2***

Land Trust in Northwest Connecticut Owns  
Property with Conservation Restriction

*New Neighbor clears ½ acre --- 68 trees/shrubs*  
("I thought we had permission...")

LT hires arborist who estimates restoration  
\$375,745

Using Guide to Plant Appraisal  
Functional Replacement Cost and Cost  
Compounding Method

Appraisal method accounts for loss of ecological  
function and benefits incurred over the period of  
time from replanting to when landscape reaches  
ecological parity with the original landscape.

Case settles – case withdrawn \$125,000

**LESSON: USE THE FORMULA!**

The Guide to Plant Appraisal is the  
statutory standard







# ***Land Trust v. New Owner With a Chainsaw Case #3***

---

**Land Trust in Northwest Connecticut Owns Property with Conservation Restriction**

***New Neighbor clears 3/4 acre --- 81 trees (“I thought we had permission...” “It was storm damage” “You can’t prove it”)***

**LT hires arborist who estimates restoration \$232,000**

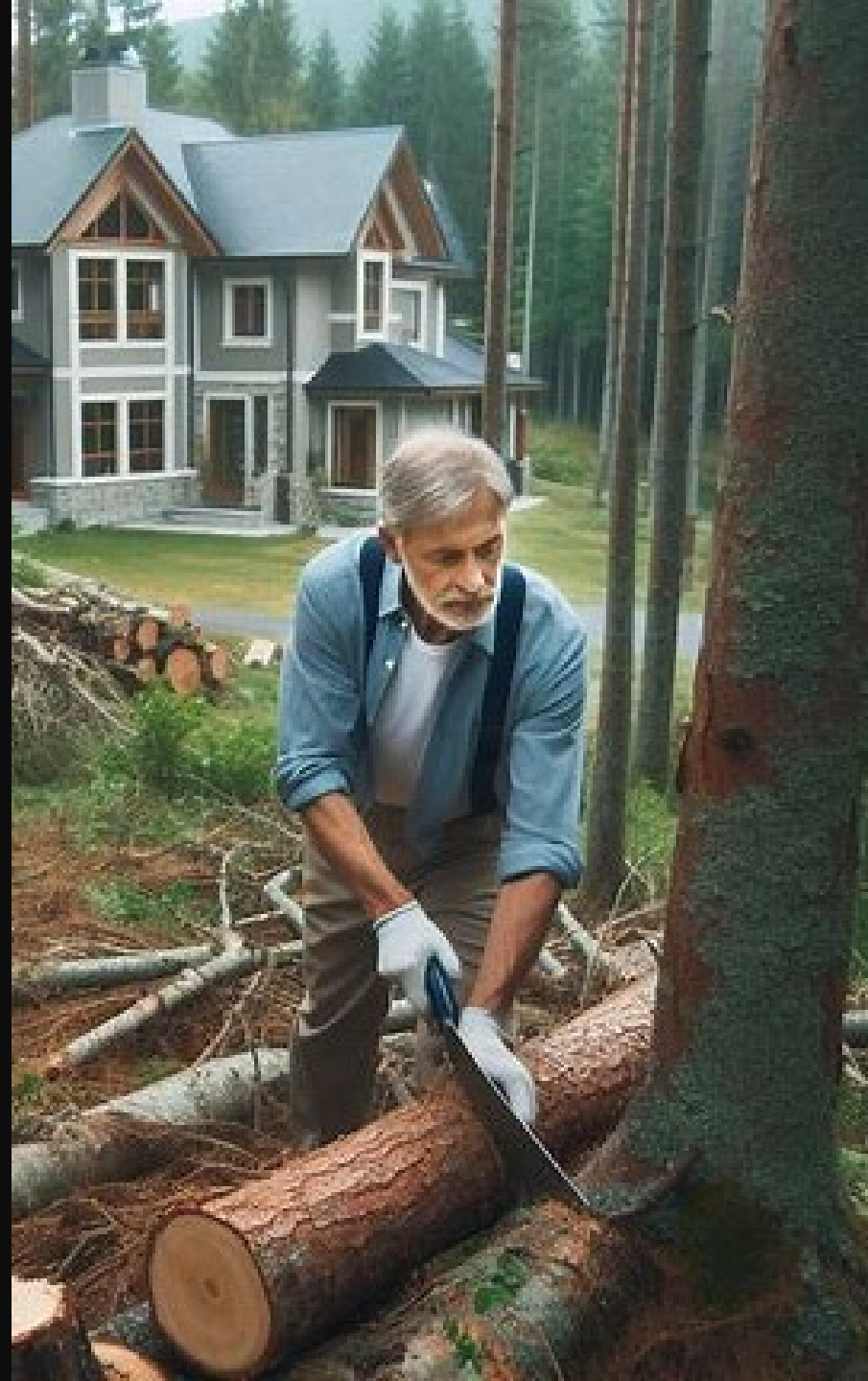
**Using Guide to Plant Appraisal**

**Case #4 – 91 trees, formula estimate \$608,570 to Structural Parity**

**(“I thought it was our land....”)**

**LESSON: USE THE FORMULA!  
The Guide to Plant Appraisal  
is the statutory standard**

---









# ***Land Trust v. A Rabbit Named Marvin Schwartz***

## ***Caution with Retained Rights***

### **Farmland Conservation Easement**

**Allows a “*barn for animals*” in Building Envelope A, but not in Area B**

**Builds tractor shed in Area B**

**Land Trust approaches him – “I’ll throw a couple of rabbits in there”**

**Land Trust sues – removes tractor – adds painting easel, bad art – “It’s an art studio”**

**Art studio allowed in Area B- Building permit was for “equipment storage”**

**Case resolves, Removes art, no tractor, reapplies for barn for animals - “What animals are in there?” “A Rabbit named Marvin Schwartz”**





# Statutory Tools

**Anti-SLAPP Suit C.G.S. §52-196a** – Early motion to Dismiss, Award of Atty Fees/Costs Where Person is Exercising Free Speech in Environmental Forum

**Park Replacement Statute - C.G.S. §7-131n** Taking of land previously intended for use as park or for other recreational or open space purposes. Must provide comparable replacement in value and size and give notice and hold public hearing.  
**STATUTE IN DANGER!!!!**

**CT Environmental Protection Act – §22a-16** – Injunction for restoration –Attorney’s fees and costs

**Inland Wetlands & Watercourses Act--§22a-44-** allows private enforcement of wetlands violations, atty’s fees and costs and UP TO \$1000/day



# Other Laws (handout)

*Law Offices of  
Keith R. Ainsworth, Esq., LLC*

51 Elm Street, Suite 201  
New Haven, CT 06510-2049  
(203)485-2014 [keith@ainsworth@lavr.com](mailto:keith@ainsworth@lavr.com)

## 2024 CONNECTICUT LAND USE & ENVIRONMENTAL LAWS

- C.G.S §52-196 – Anti-SLAPP Suit Provision – Allows for dismissal of suits filed against a person who comments on environmental matters
- C.G.S §22a-19/§22a-19a – CT Environmental Protection Act – (CEPA) environmental and historic Also: C.G.S §22a-16 – injunctions under CEPA
- C.G.S §8-3(b) – Protest petition signed by owners of 20% of land area w/in 500ft of land rea affected by zone change forces 2/3 majority vote.
- C.G.S §4-174 – Administrative procedure act – allows the call of a public hearing on state agency permitting decisions on the presentation of 25 signatures.
- C.G.S §22a-41 et seq – Inland Wetlands & Watercourses Act – often adopted verbatim on local level allowing for calling of public hearing on petition of 25 people. Bonus: Also includes \$1000/day fines for wetlands encroachment.
- C.G.S. §47-33h (2001) excludes Conservation Easements (CEs) from Marketable Record Title Act.  
[https://www.cga.ct.gov/current/PUB/chap\\_821.htm#sec\\_47-33h](https://www.cga.ct.gov/current/PUB/chap_821.htm#sec_47-33h)
- C.G.S § 47-27(b) (2002,2015, 2016) bars adverse possession and prescriptive easement claims against non-profit land holding organizations.  
[https://www.cga.ct.gov/current/PUB/chap\\_821.htm#sec\\_47-27](https://www.cga.ct.gov/current/PUB/chap_821.htm#sec_47-27)
- C.G.S. § 47-42a. Definitions(1971) Broad definition of Preservation & Conservation Restrictions  
[https://www.cga.ct.gov/current/pub/chap\\_822.htm#sec\\_47-42a](https://www.cga.ct.gov/current/pub/chap_822.htm#sec_47-42a)
- C.G.S. § 47-42b. (1971) Enforcement of conservation and preservation restrictions held by governmental body or charitable corporation. Allows perpetual CEs to be held by land trusts.  
[https://www.cga.ct.gov/current/pub/chap\\_822.htm#sec\\_47-42b](https://www.cga.ct.gov/current/pub/chap_822.htm#sec_47-42b)
- C.G.S. § 47-42c. (1971) Acquisition of restrictions. Enforcement by Attorney General. [https://www.cga.ct.gov/current/pub/chap\\_822.htm#sec\\_47-42c](https://www.cga.ct.gov/current/pub/chap_822.htm#sec_47-42c)
- C.G.S §47-42d (2005) requires notice to CE holders of permit applications with state & local land use agencies & building officials.  
[https://www.cga.ct.gov/current/pub/chap\\_822.htm#sec\\_47-42d](https://www.cga.ct.gov/current/pub/chap_822.htm#sec_47-42d)

# Conservation Easements and Fee Properties

## Easements

- **CGS 47-42a**
- **Model Easement**
- **Easier to Obtain**
- **Someone else still owns the land**
- **Increased Monitoring Duties**
- **More Encroachment**
- **Requires AG and Court approval to modify**

## Fee Ownership

- **Simple deed**
- **Relatively Expensive**
- **Sole ownership**
- **Less monitoring**
- **May dispose of or modify protections at will**
- **IRS Has No Role (unless deduction taken)**



# Recreational Use Immunity

*“To fee or not to fee...”*

- Sec. 52-557f. Landowner liability for recreational use of land.
- “Land” means land, roads, water, watercourses, private ways and buildings, structures, and machinery or equipment when attached to the realty, exceptions for municipality
- “Recreational purpose” includes, but is not limited to:
- Hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, water skiing, snow skiing, ice skating, sledding, hang gliding, sport parachuting, hot air ballooning, bicycling and viewing or enjoying historical, archaeological, scenic or scientific sites.



# Landowners Not Liable for Free Public Recreational Use

- An owner of land who ....
- Makes all or any part of the land **available to the public without charge, rent, fee or other commercial service**
- for recreational purposes
- **Owes no duty of care to keep the land..... safe** for use for recreational purposes,
- **Or to give any warning of a dangerous condition**, use, structure or activity on the land to persons entering for recreational purposes.



# Topics from the Listserv

- Can I buy Land Trust property? (definition of CHUTZPAH)
- Hunting – to allow hunting or not?
- Off-leash dog on LT trails (recreational use immunity)
- Mountain Bikes - allowed on LT property?
- Barring Rule Breakers from LT property (crim trespass)
- Nuisance Beavers
- Avigation easement (plane overflight/landing easement)
- Affidavit affecting interest in real property C.G.S. §47-12a
- LT Tree fall policy
- Fencing off water access
- Surveyor's stakes – *Reu v. Vivian*, 2002 WL 1293266, CV-98-0085524-S. (May 15, 2002)(48 hours to remove)
- Green burials and dispersal of ashes
- Tree policies – Who is responsible for tree falls?



## Questions and Answers?

Keith Ainsworth, Esq.

203-435-2014

[keithainsworth@live.com](mailto:keithainsworth@live.com)

[www.keithainsworth.com](http://www.keithainsworth.com) ©2024

CONNECTICUT  
Land Conservation Council

Share your thoughts! Scan the QR codes below to fill out evaluations online for the 2024 Connecticut Land Conservation Conference



General Conference Evaluations



Workshop Evaluations