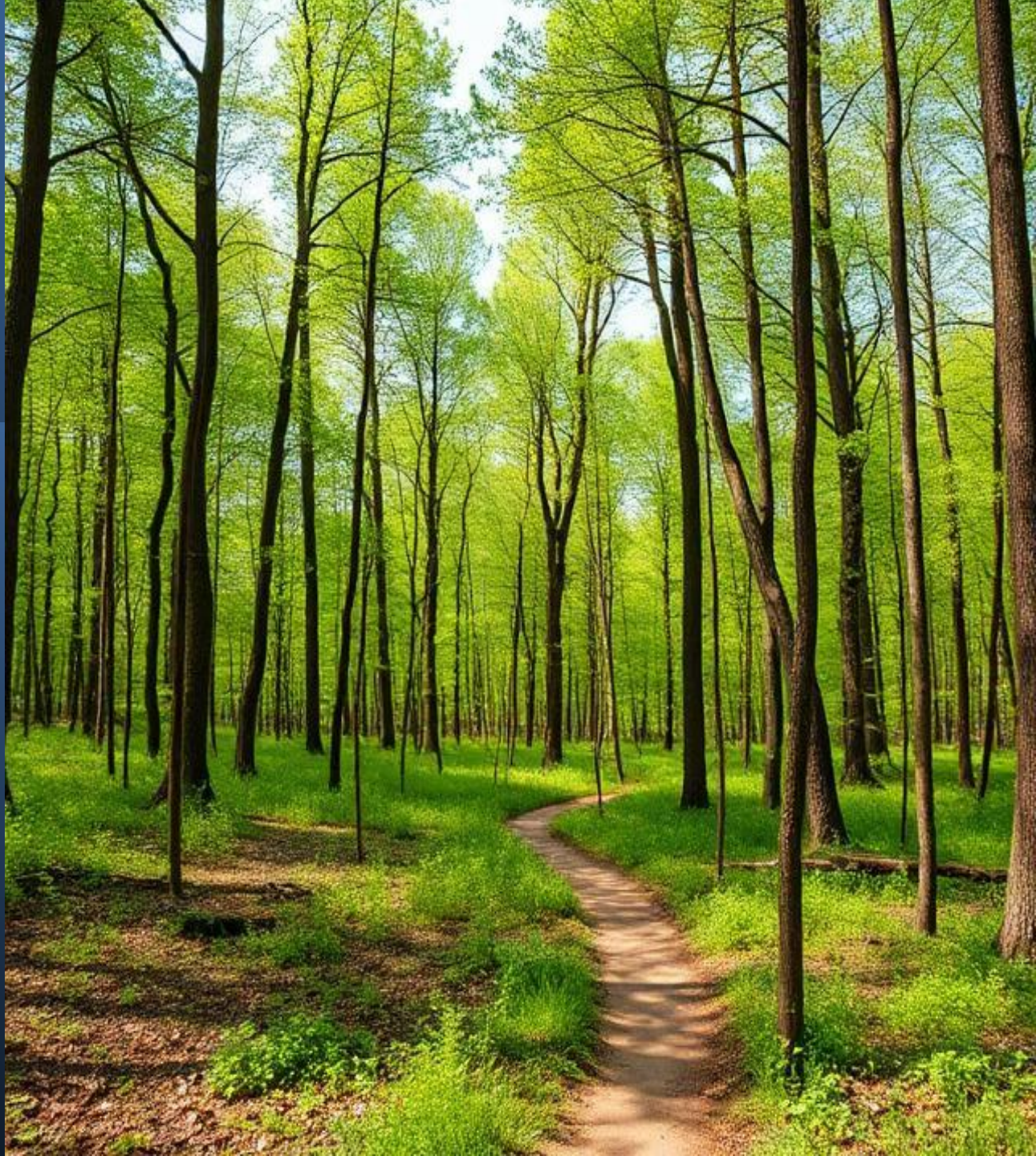


# LAND TRUST LAW SCHOOL 9<sup>th</sup> Ed

## EROSION ISN'T JUST FOR SLOPES ANYMORE

Keith R. Ainsworth, Esq.

CLCC 2026



# LAND TRUST LAW SCHOOL

## (The Erosion of Norms)

Ongoing Challenges to  
Conservation

Keith R. Ainsworth, Esq.

CLCC 2026



## TODAY'S NUGGETS



---

Land Management Tips

---

ENCROACHMENT RESPONSE

---

CY PRES ACTIONS and AMENDING  
EASEMENTS

---

AGRICULTURAL EASEMENTS

---

LAND SWAPS

---

BOUNDARY LINE ACQUIESCENCE

---

Question and Answer

# Pending Encroachments 2026

---



# 2025 WAS A FUN YEAR FOR ENFORCEMENT

## 2025 CASES

Farm Winery, Wedding Venue, Karaoke, Live Bands, Comedians, Strip shows

- Land Trust Had Parking Plan for Easement that Allowed Recreation
- Neighbor Sued Land Trust to Get Lake Access – Defective Title Search
- Noise From Trash to Energy Plant
- Municipality Building Playground on Open Space
- Town Used ChatGPT to Draft Conservation Easement
- Eversource Stringing New Wires Over CT River



# STORIES OF NEIGHBORS BEHAVING BADLY

➡ <https://treeandneighborlawblog.com/>

# NUGGETS OF WISDOM

## CY PRES ACTIONS

### BANE OF LAND SWAPS

- ▶ IF YOU RELEASE EVEN A PORTION OF AN EASEMENT YOU MUST SEEK COURT APPROVAL
- ▶ CAN YOU SELL LAND TRUST LAND? (MAYBE)
- ▶ Is deed restricted?
- ▶ Does Sale enhance or preserve charitable purpose under 47-2a?
- ▶ Net Conservation Benefit?



## NUGGETS OF WISDOM

### WHEN TO ACT

- ▶ **DEADLINES – Most Encroachments Settle With Discussion But Play a Firm Hand**
- ▶ **Statute of Limitations for Trespass 2 years**
- ▶ **Don't Let Them Delay**
- ▶ **10-day letter, 30-day Plan, 90-day Fix**



# NUGGETS OF WISDOM

## AGRICULTURAL EASEMENTS

- ▶ AG Easements are NOT the SAME AS Conservation Easements
- ▶ Agriculture Is Broadly Defined in CT in Conn.Gen.Stat 1-1(q)
- ▶ Except as otherwise specifically defined, the words “agriculture” and “farming” include cultivation of the soil, dairying, forestry, raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training and management of livestock, including horses, bees, the production of honey, poultry, fur-bearing animals and wildlife, and the raising or harvesting of oysters, clams, mussels, other molluscan shellfish or fish; the operation, management, conservation, improvement or maintenance of a farm and its buildings, tools and equipment, or salvaging timber or cleared land of brush or other debris left by a storm, as an incident to such farming operations; the production or harvesting of maple syrup or maple sugar, or any agricultural commodity, including lumber, as an incident to ordinary farming operations or the harvesting of mushrooms, the hatching of poultry, or the construction, operation or maintenance of ditches, canals, reservoirs or waterways used exclusively for farming purposes; handling, planting, drying, packing, packaging, processing, freezing, grading, storing or delivering to storage or to market, or to a carrier for transportation to market, or for direct sale any agricultural or horticultural commodity as an incident to ordinary farming operations, or, in the case of fruits and vegetables, as an incident to the preparation of such fruits or vegetables for market or for direct sale. The term “farm” includes farm buildings, and accessory buildings thereto, nurseries, orchards, ranges, greenhouses, hoopouses and other temporary structures or other structures used primarily for the raising and, as an incident to ordinary farming operations, the sale of agricultural or horticultural commodities. The terms “agriculture” and “farming” do not include the cultivation of cannabis, as defined in section 21a-420. The term “aquaculture” means the farming of the waters of the state and tidal wetlands and the production of protein food, including fish, oysters, clams, mussels and other molluscan shellfish, on leased, franchised and public underwater farm lands.
- ▶ CAN INCLUDE FARM WINERY, BREWERY OR CIDERY CONN. GEN. STAT. sec 30-16



# NUGGETS OF WISDOM

## TRICKY LAND SWAPS

- ▶ **Tempting to Resolve Encroachment By Swapping Land**
- ▶ **Slippery Slope Problem – Like Potato Chips, Can't Stop at Just One**
- ▶ **Need to Re-encumber New Plot, New Mylar Map, Not As Easy As It Seems**
- ▶ **Can Be Useful for Situations Where There Is Ambiguous Ability to Enforce (e.g. - You waited too long..... Laches)**
- ▶ **May require CY PRES**



# NUGGETS OF WISDOM

## Conservation Easements NOT The Darlings The Marketing Says They Are

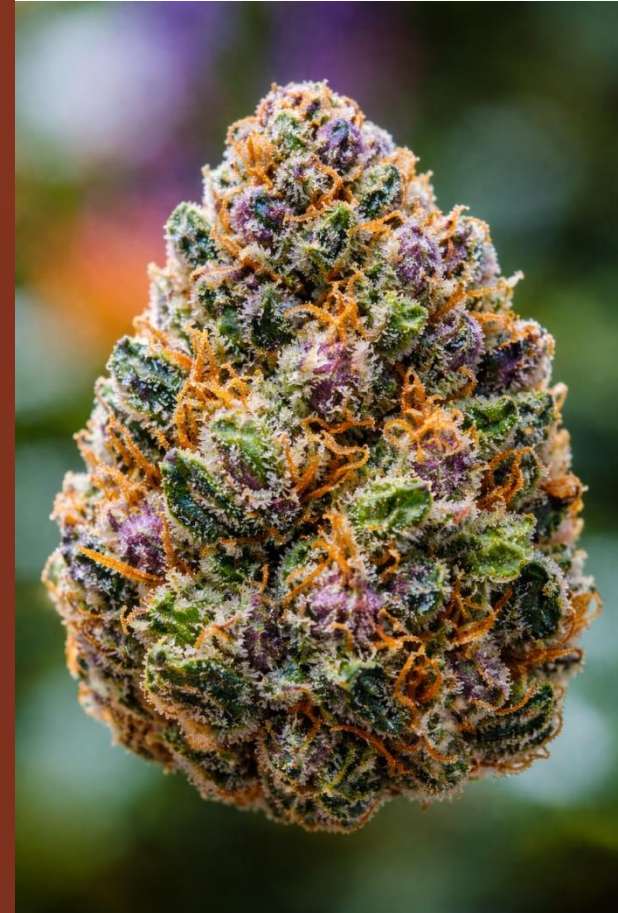
- ▶ Easements Are Only As Good As The Reserved Rights.
- ▶ What Is Given With One Hand May Be Taken With the Other
- ▶ CE's Take a Lot of Effort to Monitor
- ▶ MODIFICATIONS - CE's Cannot Be Seen As Trading Cards or Fungible Goods
- ▶ Pro Tip – If you have a sympathetic landowner renegotiate a weak CE to be stronger. The next owner may be less sympathetic. Review your CE's.



# NUGGETS OF WISDOM

## TREE CUTTING TESPASSES

- ▶ **HOMEOWNER and TREE SERVICE are BOTH LIABLE**
- ▶ **Homeowner's Policy and CGL Policy**
- ▶ **Photos of trees, stumps, trunks, slash make a good visual impression**
- ▶ **Stump count – damages are calculated by the tree**
- ▶ **Dead trees count, too (snags)**



# NUGGETS OF WISDOM

## BOUNDARY LINE ACQUIESCENCE

- ▶ REJECTED IN *NBLCT v. MASCARI* (2025)
- ▶ Ancient Concept in the Law – Alluded to *DelBuono v. Brown Boat Works*, 45 Conn.App. 524 (1997)
- ▶ If you delay in inspecting an encroachment and you should have or could have known about it, you may have impliedly agreed to the new boundary line
- ▶ Runs counter to Connecticut General Statutes §47-27(b) provides in relevant part:
- ▶ No length of possession, use or occupancy of land belonging to a nonprofit land-holding organization or of land subject to a conservation restriction, as defined in § 47-42a, held by a nonprofit land-holding organization shall create or continue any right in or to such land.



## NUGGETS OF WISDOM

### THREATS FROM THE BAD GUYS

- ▶ **DEFAMATION – THREAT DU JOUR**
- ▶ **TRUTH IS AN ABSOLUTE DEFENSE**
- ▶ **PUBLIC RELATIONS IS WORSE FOR THEM**
- ▶ **Special Motion to Dismiss 52-196a – attorneys' fees and costs, immediate dismissal**
- ▶ **First Amendment Protects Political and Pure Speech and Petition to Government**
- ▶ **Protects Statements Made on Matters of Public Concern**
- ▶ **Matters of public concern include, “issue[s] related to (A) health or safety, (B) environmental, economic, or community well-being, (C) the government, zoning and other regulatory matters, (D) a public official or public figure, or (E) an audiovisual work.”**



# NUGGETS OF WISDOM

## BASELINES

- ▶ **Baseline**
- ▶ **BASELINE**
- ▶ **BASELINES**
- ▶ **BASELINES!!!!**
- ▶ **DID I MENTION HAVING A BASELINE??**
- ▶ **PUT “BASELINE” ON SHOPPING LIST**

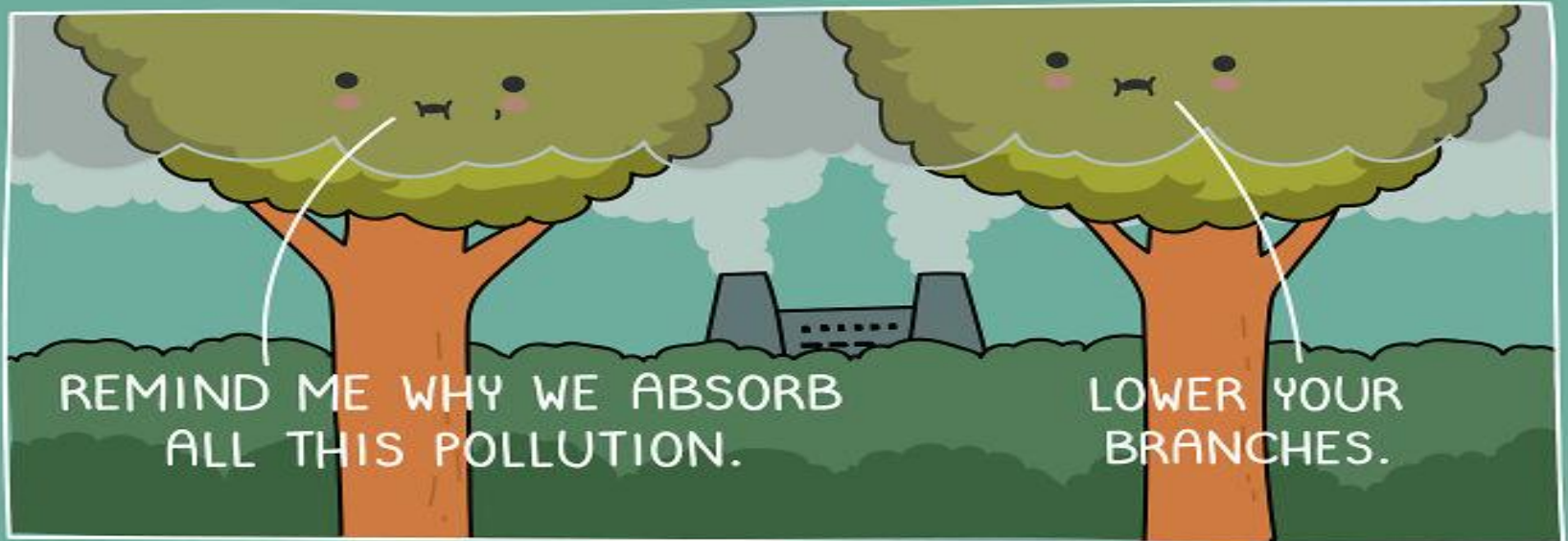


# NUGGETS OF WISDOM

## MUNICIPALITIES FRIEND OR FOE??

- ▶ Some encroachments are ALSO a wetlands violation
- ▶ Some Encroachments Are ALSO a Zoning Violation
- ▶ If You ask the Municipal WEO or ZEO to inspect, they may or may NOT Agree With You
- ▶ Towns LOSE INTEREST
- ▶ YOU LOSE CONTROL
- ▶ Unhelpful Records Get Created







We want to hear from you! Share your perspective and insights through our general evaluation and workshop evaluations for this year's conference. Scan the QR codes below to fill out evaluations online for the 2026 Connecticut Land Conservation Conference.



General Conference Evaluations



Workshop Evaluations