
TOWN ATTORNEY LEGAL MEMORANDUM

TO: Mummy Mountain Preserve Trust (MMPT) Members
FROM: Andrew M. Miller, Town Attorney
SUBJECT: Different Impacts of Donating Fee Title as Compared to a Conservation Easement
DATE: April 1, 2016

Members of the MMPT, I was asked to provide a brief summary of the differences between a donation of property in fee title to the MMPT as compared to the donation of a conservation easement. I have listed those differences below. Please also note that the interpretations that rely on the Zoning Ordinance have been reviewed with the current Community Development Director/Zoning Administrator, Eva Cutro, who is in full accord with the items noted below.

Donation of Fee Title:

- May have a larger valuation for tax deduction purposes as all rights in the property being donated are now transferred to the MMPT
- Removes the donated area from the property tax rolls for the property; thereafter the MMPT will receive a property tax bill for that area (which I request a non-profit exemption for each year)
- The donated area cannot be used for certain “land use rights” on the remainder of the donating owner’s property, that is, for FAR, setback, and disturbance area calculations (see the contrasting land use rights for conservation area donations noted below)

Donation of a Conservation Easement

- May have a lesser valuation for tax deduction purposes (appraisals are actually secured by the owner who donates the conservation easement, not the MMPT)
- Does not remove the part donated from the tax rolls but arguably has a reduced land value for the property as a whole; owner needs to raise with the Assessor
- The donated “conservation easement area” can be used for “land use rights” on the remainder of the donating owner’s property, that is, for FAR calculations, setback measurements, disturbance area, and other uses, but cannot be occupied or “developed” by the owner of the remainder of the parcel
- Actual construction on, access to, or rights to occupy the conservation easement area would not be allowed on the conservation easement area

Please advise if you have additional questions or would like to see additional research or examples of the application of the land use rights noted above on a sample lot plan or other exhibit.