ALEXANDER COUNTY NC 12/30/19

$127.00

BK0405PG2139

FILED Book 406 Page 2139
12-30-99 10:48 am/pm
Mo. Date Yr. Time
Benjamin W. Gilreed REG. OF DEEDS, ALEXANDER CO., NC

STATE OF NORTH CAROLINA

Real Estate Excise Tax

#12702 Prepared by Andy Giles, N.C. Attorney Generals Office

STATE OF NORTH CAROLINA

CONSERVATION EASEMENT

ALEXANDER COUNTY

THIS CONSERVATION EASEMENT DEED, made this 30th day of December, 1999, by and between Donald G. Payne and Wanda J. Payne, Grantors, and the State of North Carolina, Grantee, whose mailing address is State of North Carolina State Property Office, 116 West Jones Street, Raleigh, NC 27603-8003. The designations Grantors and Grantee as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine, or neuter as required by context.

WITNESSETH:

WHEREAS, pursuant to the provisions of N.C. Gen. Stat. § 143-214.8 et seq., the State of North Carolina has established the Wetlands Restoration Program (as defined in N.C. Gen Stat. § 143-214.8) within the Department of Environment and Natural Resources for the purposes of acquiring, maintaining, restoring, enhancing, and creating wetland and riparian resources that contribute to the protection and improvement of water quality, flood prevention, fisheries, aquatic habitat, wildlife habitat, and recreational opportunities; and

WHEREAS, the Wetlands Restoration Program in the Department of Environment and Natural Resources has approved acceptance of this instrument; and

WHEREAS, the acceptance of this instrument for and on behalf of the State of North Carolina has been duly approved by the Governor and Council of State by resolution adopted at a meeting held in the City of Raleigh, North Carolina, on the 7th day of December, 1999; and

WHEREAS, pursuant to the provisions of N.C. Gen. Stat. § 143-214.8, two of the components of the Wetlands Restoration Program are (1) restoration and perpetual maintenance of wetlands, riparian areas, and surface waters and (2) land ownership and management; and

WHEREAS, Grantors own in fee simple certain real property situated, lying, and being in Alexander County, North Carolina (the "Protected Property"), and being more particularly described as that certain parcel of land on the east and west sides of State Road 1605 **as described in Deed Book 287 at Page 034** of the Alexander County Registry and being in Taylorsville Township, Alexander County, North Carolina; and

WHEREAS, Grantors are willing to grant a Conservation Easement on the Protected Property, thereby restricting and limiting the use of the Protected Property to the terms and conditions and for the purposes hereinafter set forth, and Grantee is willing to accept such easement;

NOW, THEREFORE, in consideration of the mutual covenants, terms, conditions, and restrictions hereinafter set forth, Grantors unconditionally and irrevocably hereby grant and convey unto Grantee, its successors and assigns, forever and in perpetuity, a Conservation Easement of the nature and character and to the extent hereinafter set forth, over the Protected Property for the benefit of the people of North Carolina, and being all of the tracts of land as identified as Tracts "B" and "C."

Tract "B" of the Protected Property being more particularly described as follows:

Beginning on an existing iron pipe in a stump, a common corner of Superior Jersey Farm, Inc. and Donald G. Payne (287/034), in the line of the John C. Payne Estate; thence from said beginning point S 04°06'59"E 2024.78' to an existing corner (common corner of Superior and Payne); thence S 06°37'38"E 338.62' to an existing stone (common corner of Superior, Payne and Danny R. Millsaps 365/1288); thence with Millsaps' line S 00°53'25"W 379.64' to a 24" Red Oak (common corner of Millsaps and Payne); thence with another line of Millsaps S 86°26'23"E 31.20' to an existing stone; thence continuing with Millsaps' (364/2347) line, S 00°03'33"E 1072.39' to a 1/2" rod set North of S.R. 1614 (a common corner of Millsaps, Payne and Samuel C. Hefner

(253/111); thence with the Northern margin of S.R. 1614 and the line of Hefner S 89°15'49"W 312.13' to a 1/2" rod set in the line of Richard L. Lackey (253/109); thence a series of new lines interior to the Donald G. Payne (287/034) Property N 12°40'41"W 200.77' to a point; thence N 01°31'32"W 84.10' to a point; thence N 01°34'20"E 130.39' to a point; thence N 04°40'41"E 94.22' to a point; thence N 19°51'48"E 129.82' to a point; thence N 34°18'35"E 98.18' to a point; thence N 00°13'11"E 73.07' to a point; thence N 00°29'34"E 97.85' to a point; thence N 22°20'53"W 85.97' to a point; thence N 20°23'54"W 78.77' to a point; thence N 16°04'56"W 106.21' to a point; thence N 27°13'38"W 88.35' to a point; thence N 28°07'44"W 91.94' to a point; thence N 42°55'04"E 122.32' to a point; thence N 05°01'58"E 95.45' to a point; thence N 01°35'59"E 112.58' to a point; thence N 07°57'57"W 612.83' to a point; thence N 68°13'50"W 97.39' to a point; thence N 05°13'57"W 315.17' to a point; thence N 02°20'11"W 200.81' to a point; thence N 26°07'34"W 260.32' to a point; thence N 17°04'56"E 231.60' to a point; thence N 28°48'46"E 113.19' to a point; thence N 23°50'33"E 318.65' to a point; thence N 06°36'32"W 106.94' to a point; thence N 09°59'23"E 112.72' to a point; thence N 76°58'22"E 39.69' to the point and place of beginning containing 29.262 acres by coordinate computation according to a survey plat entitled "Donald G. Payne Property" by Carl D. Bunton & Associates Land Surveying Services, dated July 20, 1999, revised September 28, 1999 and certified by Carl D. Bunton, PLS-3032, and

Tract "C" of the Protected Property being more particularly described as follows:

Beginning on a 1/2" rod set, said iron being in the line of Harold T. Little (187/756), said iron being also located N 04°59'40"E 297.18' from an existing 1/2" rebar in the center of the creek, the common corner of Little (187/756) and the S.W. corner of the Payne tract (287/34), said iron being also located S 68°46'22"W 117.31' from an existing capped 5/8" rebar (a control point set by East Coast Surveyors bearing N.C. Grid Coordinates of: N. 779405.001 and E. 1364298.119); thence 4 new lines, interior to the Payne property as follows: N 88°52'47"E 93.33' to a point; thence S 80°03'13"E 146.67' to a point; thence S 83°28'14"E 130.71' to a point; thence S 85°52'22"E 77.52' to a point in the division line of Payne tracts (287/034 and 287/038); thence with said division line S 15°31'15"W 238.56' to a 1/2" rod set in the center of the creek; thence with the creek S 86°52'24"W 407.60' to an existing 1/2" rebar in the center of the creek, a common corner of Harold T. Little; thence with Little's line N 04°59'40"E 297.18' to the point and place of beginning, containing 2.608 acres by coordinate computation, according to an actual field survey performed by Carl D. Bunton & Associates, Land Surveying Services, as shown on a plat of survey entitled "Donald G. Payne Property" dated July 20, 1999, revised September 28, 1999 and certified by Carl D. Bunton, PLS-3032.

The purposes of this Conservation Easement are to maintain, restore, enhance, and create a wetland and/or riparian resource on the Protected Property that contributes to the protection and improvement of water quality, flood prevention, fisheries, aquatic habitat, wildlife habitat, and recreational opportunities; to maintain permanently the Protected Property in its natural condition, consistent with these purposes; and to prevent any use of the Protected Property that will significantly impair or interfere with these purposes. To achieve these purposes, the following conditions and restrictions are set forth:

I. DURATION OF EASEMENT

This Conservation Easement shall be perpetual. It is an easement in gross, runs with the land, and is enforceable by Grantee against the Grantors, their personal representatives, heirs, successors, and assigns, lessees, agents, and licensees.

II. RESERVED USES AND RESTRICTED ACTIVITES

The Protected Property shall be restricted from any development or usage that would impair or interfere with the purposes of this Conservation Easement. Unless expressly reserved as a compatible use herein, any activity on, or use of, the Protected Property by the Grantors is prohibited as inconsistent with the purposes of this Conservation Easement. Any rights not expressly reserved hereunder by the Grantors have been acquired by the Grantee. The following specific uses are prohibited, restricted, or reserved as indicated:

A. **Recreational Uses.** Grantors expressly reserve the right to undeveloped recreational uses, including hunting and fishing, and access to the Protected Property for the purposes thereof. Usage of motorized vehicles on the Protected Property is prohibited.
B. **Educational Uses.** The Grantors reserve the right to undeveloped educational uses and the right of access to the Protected Property for such purposes including organized educational activities such as site visits, studies, and observations.
C. **Vegetative Cutting.** Cutting, removal, mowing, harming, or destruction of any vegetation on the Protected Property is prohibited.
D. **Industrial Use.** Industrial activities on the Protected Property are prohibited.
E. **Residential Use.** Residential use of the Protected Property is prohibited.
F. **Commercial Use.** Commercial activities on the Protected Property are prohibited.
G. **Agricultural Use.** Agricultural use of the Protected Property including use for cropland, waste lagoons, or pastureland is prohibited.
H. **New Construction.** There shall be no building, facility, mobile home, or other structure constructed or placed on the Protected Property.
I. **Signs.** No signs shall be permitted on the Protected Property except interpretive signs describing restoration activities and the conservation values of the Protected Property, signs identifying the owner of the Protected Property and the holder of the Conservation Easement, and signs giving directions or proscribing rules and regulations for the use of the Protected Property.
J. **Dumping.** Dumping of soil, trash, ashes, garbage, waste, abandoned vehicles, appliance or machinery, or other material on the Protected Property is prohibited.
K. **Grading, Mineral Use, Excavation, Dredging.** There shall be no grading, filling, excavation, dredging, mining, or drilling; no removal of topsoil, sand, gravel, rock, peat, minerals, or other materials.
L. **Water Quality and Drainage Patterns.** There shall be no diking, draining, dredging, channeling, filling, leveling, pumping, impounding or related activities, or altering or tampering with water control structures or devices, or disruption or alteration of the restored, enhanced, or created drainage patterns. In addition, diverting or causing or permitting the diversion of surface or underground water into, within or out of the easement area by any means, removal of wetlands, polluting or discharging into waters, springs, seeps, or wetlands, or use of pesticide or biocides is prohibited.
M. **Subdivision.** Subdivision, partitioning, or dividing the Protected Property is prohibited.
N. **Development Rights.** No development rights which have been encumbered or extinguished by this Conservation Easement shall be transferred pursuant to a transferable development rights scheme or cluster development arrangement or otherwise.

The Grantee, and authorized representatives of the Grantee, shall have the right to enter the Protected Property and shall have the right of reasonable ingress and egress to the Protected Property over the Grantors' property, at all reasonable times to undertake any activities to restore, manage, maintain, enhance, and monitor the wetland and riparian resources of the Protected Property. These activities include planting of trees, shrubs and herbaceous vegetation, installation of monitoring wells, utilization of heavy equipment to grade, fill, and prepare the soil, modification of the hydrology of the site, and installation of natural and manmade materials as needed to direct in-stream, above ground, and subterraneous water flow. In addition, the Grantee, and authorized representatives of the Grantee, shall have the right to enter the Protected Property and shall have the right of reasonable ingress and egress to the Protected Property over the Grantors' property, at all reasonable times for the purpose of inspecting said property to determine if the Grantors are complying with the terms, conditions, restrictions, and purposes of this Conservation Easement. The easement rights granted herein do not include public access rights.

The Grantors may request permission to vary from the above restrictions for good cause shown, provided that any such request is consistent with the purposes of this Conservation Easement. The Grantors shall not vary from the above restrictions without first obtaining written approval from the Wetlands Restoration Program, whose mailing address is 1619 Mail Services Center, Raleigh, NC 27699-1619.

III. ENFORCEMENT AND REMEDIES

A. In the event that Grantee determines that the Grantors have violated or are threatening to violate any of these terms, conditions, or restrictions, the Grantee may institute a suit to enjoin such violation and if necessary, to require the restoration of the Protected Property to its prior condition at the expense of the Grantors.

B. No failure on the part of Grantee to enforce any covenant or provision hereof shall discharge or invalidate such covenant or any other covenant, condition, or provision hereof or affect the right of Grantee to enforce the same in the event of a subsequent breach or default.

IV. MISCELLANEOUS

A. This Conservation Easement shall be construed to promote the purposes of N.C. Gen Stat. § 143-214.8 et seq., the Wetlands Restoration Program.

B. This instrument sets forth the entire agreement of the parties with respect to the Conservation Easement and supersedes all prior discussions, negotiations, understandings or agreements relating to the Conservation Easement. If any provision is found to be invalid, the remainder of the provisions of the Conservation Easement, and the application of such provision to persons or circumstances other than those as to which it is found to be invalid, shall not be affected thereby.

C. Any notices shall be sent by registered or certified mail, return receipt requested to the parties at their addresses shown above or to other address(es) as either party establishes in writing upon notification to the other.

D. The Grantors shall notify Grantee in writing of the name and address and any party to whom the Protected Property or any part thereof is to be transferred at or prior to the time said transfer is made. The Grantors further agree to make any subsequent lease, deed, or other legal instrument by which any interest in the Protected Property is conveyed subject to the Conservation Easement herein created.

V. QUIET ENJOYMENT

The Grantors reserve all rights accruing from ownership of the Protected Property, including the right to engage in or permit or invite others to engage in only those uses of the Protected Property that are expressly reserved herein, not prohibited or restricted herein, and are not inconsistent with the purposes of this Conservation Easement. Without limiting the generality of the foregoing, the Grantors expressly reserve to the Grantors, and Grantors' invitees and licensees, the right of access to the Protected Property, and the right of quiet enjoyment of the Protected Property.

TO HAVE AND TO HOLD the said rights and easements perpetually unto Grantee for the aforesaid purposes.

AND the Grantors covenant that they are seized of said premises in fee and have the right to convey the permanent easement herein granted; that the same are free from encumbrances and that they will warrant and defend title to the same against the claims of all persons whomsoever.

IN TESTIMONY WHEREOF, the Grantors have hereunto set their hand and seal, the day and year first above written,

Donald G. Payne (SEAL)

Wanda J. Payne (SEAL)

NORTH CAROLINA COUNTY OF Iredell

I, Judy B. Miller, a Notary Public in and for the County and State aforesaid, do hereby certify that Donald G. Payne and Wanda J. Payne Grantors, personally appeared before me this day and acknowledged the execution of the foregoing instrument.

IN WITHNESS WHEREOF, I have hereunto set my hand and Notarial Seal this the 30th day of December, 1999.

Judy B. Miller
Notary Public

JUDY B. MILLER NOTARY PUBLIC IREDELL COUNTY, N.C.

My commission expires: 3-17-2002

NORTH CAROLINA ALEXANDER COUNTY
The foregoing or annexed certificate of Judy B. Miller Notary Public(s) of Iredell County, N.C. is certified to be correct. This 30th day of December, 1999
Benjamin W. Hines, Register of Deeds

Jean a Starnes
~~Assistant~~/Deputy/Register of Deeds