

Example #3

A conservation and drainage easement along both sides of a stream that ran through and bisected a farm property was imposed as a condition of minor subdivision approval. [See Example 3 Map attached]. The easement was recorded in the landowner's deed to himself perfecting subdivision approval, and contained the provision that the easement "granted and intended to be granted hereby has been created for the benefit of the general public through the protection of water and land resources and natural beauty".

After the municipality applied to the SADC for a cost share grant and the title work was reviewed, staff determined that the terms of the conservation easement would restrict agricultural activities within the easement area as well as severely limit, if not prohibit, access to the rear of the property, thus rendering that portion of the farm undevelopable. It was noted that the appraisals submitted in support of the cost share grant application had not taken this development limitation into consideration. The SADC advised the landowner and municipality that the drainage and conservation easement adversely impacted agricultural activities and development value.

The landowner subsequently secured release of the conservation easement by applying to and obtaining approval from the local planning board and the municipal governing body, and instituting litigation in superior court that resulted in an order vacating the easement and reconsolidating the subdivided property. The landowner's application to preserve the farm is still pending, and the municipality is in the process of obtaining new appraisals of the property in its current condition.

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