

Chapter XX: OPEN SPACE PRESERVATION AND ACQUISITION

§§ XX-1. Legislative findings.

A. The State of New York, by various legislative enactments, including but not limited to General Municipal Law §§ 247 and Environmental Conservation Law §§ 49-0301, has found that the rapid growth and spread of urban development is encroaching upon, or eliminating, many open areas and spaces of varied size and character, including many having significant scenic or aesthetic values, which areas and spaces if preserved and maintained in their present open state would constitute important physical, social, aesthetic or economic assets to existing or impending urban or metropolitan development. The Legislature has determined that the acquisition of open spaces and farmland is a valid public purpose and that the expenditure of Town funds to acquire legal interests and rights in such lands is in furtherance of such purpose and is a proper expenditure of public funds for public purposes.

B. The Town of Gardiner supports such public purposes and finds that such purposes can be achieved by instituting a program for the acquisition of interests or rights in real property for the preservation of open spaces and farmland. Such a program would be consistent with the Gardiner Open Space Plan adopted in January 2007. The Town Board further moved toward local funding for the acquisition of open spaces and farmland by placing a bonding proposition on the November, 2006, general election ballot. A majority of voters in the Town approved such proposition, authorizing the expenditure of \$1.5 million for the acquisition of open spaces and farmland, including, among other things, development rights. This chapter is intended to indicate generally and in particular the procedures to be employed by the Town to protect and conserve open spaces, as characterized in the Gardiner Open Space Plan, utilizing the Open Space Preservation and Acquisition fund, established herein.

§§ XX-2. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

OPEN SPACE COMMISSION—The Gardiner Open Space Planning and Finance Commission.

OPEN SPACE PRESERVATION FUNDS—Includes all monies deposited in the fund established by §§ XX-5 hereof.

AGRICULTURAL LANDS —Lands used in bona fide agricultural production located in an NYS State certified agricultural district and receiving agricultural assessment.

AGRICULTURAL USE AND PRODUCTION—The use and production for commercial purposes of all those items and products as defined in NYS Agriculture and Markets Law §§ 301, including, but not limited to, plants and animals useful to man, including fruits, viticulture, nuts, vegetables, greenhouse plants, tree nurseries, Christmas trees, forages, sod crops, grains, feed crops, dairy, processing of farm-produced dairy products, all domestic livestock for breeding and grazing and the equine industry, aquaculture, hydroponics, and other similar uses and activities.

ALIENATION—The sale or transfer of any development right in real property acquired under this chapter by or from the Town of Gardiner to another person or entity and shall include, without limitation, changes or amendments in the terms or provisions of conservation easements held by the Town.

CONSERVATION EASEMENT—A negative easement in gross that restricts the use of real property to conservation purposes described in a deed of easement or other legal document.

DEED or CONTRACT OF EASEMENT—A legal document which conveys and/or restricts the use of legal interests in land.

DEVELOPMENT RIGHT—Those rights permitted to real property or land with respect to residential or commercial uses or density of use in accordance with law.

INTEREST or RIGHT—In real property shall include any legally recognized interest and right in real property less than fee simple.

NEGOTIATION BEYOND FIXED CONTRACT FACTORS—Specific modification to standard agreements, easements, or other standard documents which furthers program interests.

NON-FARM OPEN SPACE—Parcels of land that are not receiving agricultural assessment. Such open space may be part of a significant view shed, harbor endangered species or abundant animal habitats, protect a vital aquifer, be adjacent to an already existing conservation easement parcel, proximate to a public facility, contain a year-round stream or body of water, have an historic structure (or structures) or proven native American landmarks and artifacts, or border a scenic road, or have other significant conservation value as outlined in the Town's Open Space Plan.

OPEN SPACE ACQUISITION BOND FUNDS—The \$ 1.5 authorized by the referendum approved by the voters on November 5, 2006.

PERMEABILITY—The ability of soils to absorb and transmit water from the surface toward the subsoil without an artificial or natural barrier. This term relates to the qualitative evaluation of soils for agricultural purposes.

STRUCTURE—Anything constructed, erected or moved from other premises, and located in, on or under the ground, or attached to anything in, on or under the ground, including fences.

§§ XX-3. Open Space Commission.

There is hereby established a commission to be known as the Open Space Planning and Finance Commission of the Town of Gardiner, hereinafter referred to as "the Commission".

§§ XX-3.a. Commission Membership.

- A. The Commission is constituted as a continuing agency of the Town of Gardiner and shall consist of nine (9) members plus one (1) alternate to be appointed by the Town Board. Persons residing within the Town of Gardiner who shall have demonstrated significant interest in and commitment to the conservation, protection and encouragement of open space and of agricultural lands, both for production of food and for preservation of such lands as valued natural and ecological resources evidenced, either by involvement in conservation and preservation groups, or expertise in real estate, finance, planning, law, grant writing, negotiation, etc., by employment or by volunteer activity in such areas, shall be eligible for appointment as members of the Commission.
- B. Commission members shall serve for a term of five (5) years. The terms of the initial commission shall have staggered expiration dates, and the staggered expiration of terms shall be maintained. The Town Board has the option of renewing terms.
- C. The Chairman of the Commission shall be appointed by the Town Board annually and may succeed him or herself in such position for successive terms of one (1) year each to a maximum of five (5) successive years.
- D. The Committee shall meet at least quarterly.

- E. A quorum for the transaction of business shall consist of five (5) of the Commission's members. The alternate member shall have a vote if a quorum is not present.

§ XX-3.b. Powers and Duties of the Commission.

The Commission's role is to advise and assist the Town Board in protecting undeveloped land and other natural and cultural resources as defined in the Open Space Plan. The Commission shall have the authority to:

- A. Solicit applications from landowners for the acquisition of interests or rights, including development rights of both agricultural and non-agricultural properties;
- B. Encourage owners of lands with conservation value to submit applications consistent with this chapter, in order to establish, preserve or maintain open space or open areas;
- C. Offer review, analysis and other assistance with the application process;
- D. Communicate with landowners who are potential applicants;
- E. Review conservation easements annually via monitoring by the Town Code Enforcement Officer, or make other provisions for such monitoring, of interests acquired to insure that regulations are properly observed, file a written report on each parcel and notify the owner, in writing, of any noted infraction;
- F. Serve as a review board for the making of recommendations for the location, construction, or moving of structures on, to or within all lands on which development rights have been acquired with respect to any applications pending before any other local governmental board, body or agency;
- G. Promulgate, subject to Town Board approval, such procedural rules and regulations as may be necessary to carry out the purposes and intent of this chapter, including developing ranking criteria that are consistent with the Open Space Plan.
- H. Administer the provisions as promulgated, including evaluation and ranking of applicants for acquisition or interests in real property.
- I. Advocate conservation-based development. Educate the public and large landowners on land protection strategies and opportunities. Work with interested, and willing landowners to help them realize attractive economic returns from their land.
- J. Seek funds to leverage the \$1.5 million bond from government and private sources.
- K. Develop and nurture relationships with key land-use and conservation organizations, land trusts, planning boards, etc.
- L. Have such powers and exercise such duties as are set forth in this local law.
- M. Hold yearly informational meetings and provide quarterly written reports of activities to the Town Board.

§§ XX-5. Open Space Preservation and Acquisition Fund.

- A. The Town of Gardiner Open Space Preservation and Acquisition Fund (the "Fund") is hereby established.
- B. Deposits into the Fund shall include revenues of the Town from whatever source and shall include, at a minimum, Open Space Bond Funds, all revenues from or for the amortization of indebtedness authorized for the acquisition of open spaces or areas pursuant to §§ 247 of the General Municipal Law, and any revenues from the real estate transfer tax which may be established.
- C. The Fund shall also be authorized to accept gifts on behalf of the Town. Interest accrued by

monies deposited in the Fund shall be credited to the Fund.

D. In no event shall monies deposited in the Fund be transferred to any other fund or account.

E. Nothing contained in this chapter shall be construed to prevent the financing, in whole or in part, pursuant to the Local Finance Law of the State of New York, of any acquisition or interest authorized by this chapter. Monies from the Fund may be utilized to repay any indebtedness or obligations incurred pursuant to the Local Finance Law, consistent with the purposes and intent of this chapter.

§§ XX-6. Purposes of Fund.

A. The purposes of the fund shall be exclusively:

- (1) To implement the Town's open space preservation and acquisition program;
- (2) To acquire interests or rights in real property for the preservation of agricultural and open space lands within the Town.
- (3) The acquisition of interest and rights in real property under the fund shall be in cooperation with willing sellers.

§§ XX-7. Acquisition of Interest in Property; Public Hearing and Other Requirements.

A. The Town Board shall hear and decide on all applications made pursuant to this local law. The following is the procedure to be followed by the Town Board, the Commission and the applicants:

1. The Town Board shall announce the availability of funding.
2. The Commission will create an application form and establish a due date for applications.
3. All applications shall be filed with the Commission, by the due date and upon the application form created for this purpose and supported by such additional information, maps and other documents as shall reasonably be required by the Commission to insure compliance with this local law.
4. Upon filing of such application and payment to the "Town of Gardiner" of a filing fee and other charges as set forth from time to time by resolution of the Town Board, the Commission shall forthwith transmit to the Town Board all the papers constituting the application along with the Commission's recommendations and rankings.
5. The Town Board may hold a public hearing on all applications; the Town Board must hold a public hearing prior to funding an application. The Town Board shall publish in the official newspaper of the Town notice of the time, place and date upon which the application shall be heard at a public hearing to be held upon not less than twenty (20) nor more than thirty (30) days next following publication.
6. Referrals to the Planning and other boards shall be at the discretion of the Town Board. At least 20 days before the date of the hearing held in connection with any application submitted to the Town Board, the Town Board shall transmit to the Planning Board, to the Environmental Conservation Commission and to such other boards as the Town Board shall determine a copy of the application and shall request that each such board submit to the Town Board its advisory opinion on said application. Each board shall submit its recommendations prior to the date of the public hearing. The failure of such board to submit its recommendations shall be interpreted as a favorable recommendation upon the application.

7. Nothing herein shall prevent the Town Board from entering into a conditional purchase agreement before a public hearing is held.
8. Any resolution of the Town Board approving an acquisition of land pursuant to this chapter shall include a finding that such acquisition is a suitable alternative for the protection of such lands available for the Town, that such acquisition is in furtherance of the Town's goals for the equitable allocation of open space acquisition bond funds (if applicable), and that acquisition is in furtherance of other applicable program goals.
9. A decision to fund may be for a limited time or can be rescinded at any time by the Town Board.
10. Nothing prevents the Town Board from submitting grant applications with necessary assurances to fund acquisition for specific properties as recommended by the Open Space Commission without a public hearing.

B. The Town Board may purchase real estate from a willing seller that is deemed to be threatened by development, in order to protect a critical area of open space. Open space acquisition bond funds may be temporarily used for such purposes. Such land shall then be sold (alienated), at any time, as long as it is in keeping with the Open Space purposes for which it was acquired and as long as it bears a conservation easement similar to the easements which constrain other lands in the Open Space program. To the extent that the funds used to purchase such land came from the fund, the net sales price of such land will be returned to the fund. A public hearing must be held prior to purchase. A sale of land pursuant to the provisions of this subdivision shall not be subject to the requirement of subdivision XX-8.

§§ XX-8. Alienation of Open Space Program Lands.

A. Except as otherwise set forth in this chapter, no lands acquired pursuant to this chapter shall be alienated, except by vote of a majority plus one of the entire Town Board, subject to permissive referendum, pursuant to the procedures found in Article 7 of the Town Law. Before starting the alienation process, it is incumbent upon the Town Board to demonstrate that said lands no longer serve a valid conservation purpose, as outlined in the Town's Open Space plan. Any funds received as a result of alienated land shall go back into the Open Space Fund.

§§ XX-9. Preparation of Proposal for PDR Grants to NYS Department of Agriculture and Markets.

A. Upon announcement by state and/or federal grant funds two (2) Commission members shall be selected to study the RFP (request for proposals), and make a recommendation to the Commission about whether or not to apply for a particular grant. To the extent appropriated funds are available and with the consent of the Town Board, the Commission may employ the services of a grant writer to be retained by the Town in order to facilitate and enhance the application for and receipt of grants.

B. After evaluating and ranking the lands that would qualify for a grant, only those that rank within the top 15% of all applicants shall be submitted for state funding (and federal funding, when available).

§§ XX-10. Gifting of Open Spaces and Areas.

A. The Town Board may accept by gift interests in open spaces, or rights thereto, on terms and

conditions acceptable to the Town Board. If so designated, such lands and or rights, including, among other things, development rights, shall be deemed to have been acquired under the open space preservation program.

§§ XX-11. Easement Contracts.

The Town Board shall adopt specimen conservation easements for agricultural and non-farm lands, which easements shall be made appendices to this chapter. Such easements shall be on file in the Town offices. Such specimen easements may be amended from time to time and are subject to negotiation.

§§ XX-12. Access to Town Attorney for Legal Opinions.

The Commission shall have access to attorneys for the Town designated by the Town Board in matters requiring legal opinion.

§§ XX-13. Conflicts.

Notwithstanding the provisions of any special law, charter law, local law or resolution which may be inconsistent herewith, in whole or in part, this chapter shall in all respects control in the matter of acquisition of land and/or development rights.

§§ XX-14. Validity

If any part or provision of this Local Law or the application thereof to any person or circumstance be adjudicated invalid by a court of competent jurisdiction, such judgment shall be confined in its operation to the part or provision or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this Local Law or the application thereof to other persons or circumstances, and the Town Board of the Town of Gardiner hereby declares that it would have passed this Local Law or the remainder thereof had such invalid application or invalid provision been apparent.

§§XX-15. Repeal

All ordinances, local laws and parts thereof that are inconsistent with this Local Law are hereby repealed.

§§XX-16. Effective Date

This Local Law shall take effect immediately upon the filing in the office of the New York State Secretary of State in accordance with Section 27 of the Municipal Home Rule Law.