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Town of Gardiner

Local Law No. [___ Proposed] of 2023

A LOCAL LAW TO CONSOLIDATE THE OPEN SPACE PRESERVATION AND ACQUISITION CHAPTER 165 INTO CHAPTER 101 OF THE TOWN CODE

BE IT ENACTED by the Town Board of the Town of Gardiner, Ulster County, New York, as follows:

SECTION 1. - LEGISLATIVE FINDINGS:

The Town of Gardiner has adopted Article I entitled "Establishment of Community Preservation Fund", Article II entitled "Community Preservation Project Plan", and Article III entitled "Transfer Tax," all codified as part of Chapter 101 of the Town Code entitled "Community Preservation."

The Town has determined that it would be in the public interest and would promote efficiency in government to consolidate the provisions of former Chapter 165 of the Town Code, Open Space Preservation and Acquisition, into Chapter 101 and to provide that the Community Preservation Advisory Board created under Section 101-4 would serve the purposes of the former Open Space Commission, as set forth in this Local Law.

The Town Board finds that this Local Law is necessary and in the best interests of the Town.

SECTION II. - TOWN CODE AMENDED:

§ 2.1. The definition of the term "Advisory Board" in Section 101-1 of the Town Code is hereby amended to read as follows:

ADVISORY BOARD

The Town of Gardiner Community Preservation Advisory Board created under this article.

§ 2.2. Gardiner Town Code Chapter 165 entitled "Open Space Preservation and Acquisition" is hereby renumbered as new Article IV entitled "Open Space Planning and Acquisition" of Chapter 101 entitled "Community Preservation" of the Town Code, and said new Article IV is hereby further amended and restated to read as follows:

ARTICLE IV Open Space Planning and Acquisition

§ 101-40. 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. 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.

§ 101-41. Definitions.

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

AGRICULTURAL LANDS

Lands used in bona fide agricultural production located in a New York State certified agricultural district and receiving agricultural assessment.

AGRICULTURAL 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 people, 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 article 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 conservation easement within the meaning of Section 49-0303 of the New York State Environmental Conservation Law.

DEVELOPMENT RIGHT

Those rights and interests in real property with respect to development or changes in the real property, including 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, including without limitation interests in fee simple, conservation easement, or other interests less than fee simple.

NONFARM OPEN SPACE

Parcels of land that are not receiving agricultural assessment. Such open space may be part of a significant viewshed, 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.

COMMUNITY PRESERVATION ADVISORY BOARD

The Advisory Board established pursuant to Section 101-4 of the Town Code

OPEN SPACE FUND

The fund established by §101-43 hereof.

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.

§ 101-42. Community Preservation Advisory Board Purposes and Powers for Article IV.

- A. Powers and duties of Community Preservation Advisory Board. The Community Preservation Advisory Board's role for purposes of this Article IV 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 or the Community Preservation Plan. The Community Preservation Advisory Board shall have the authority to:
- (1) Solicit applications from landowners for the acquisition of interests or rights, including development rights of both agricultural lands and nonfarm open space;
 - (2) Use the tools of the Community Preservation Plan and the Natural Resources Inventory (NRI), along with the guidelines of major grant providers to target and encourage owners of lands with significant conservation values to submit applications consistent with this article, with the goal of establishing, preserving or maintaining open space or open areas;
 - (3) Offer review, analysis and other assistance with the application process;
 - (4) Communicate with landowners who are potential applicants;
 - (5) Promulgate, subject to Town Board approval, such procedural rules and regulations for applications, evaluation and ranking of proposed acquisitions as may be necessary to carry out the purposes and intent of this Article;
 - (6) Review and advise the Town Board annually regarding the interests or rights acquired by the Town pursuant to this Article IV. The Town will designate staff or engage one or more not for profit conservation organizations or other qualified persons or entities to monitor acquired interests at least annually to ensure that the provisions of applicable agreements are properly observed, and notify the owner, in writing, of any noted infraction; and provide a written report to the Town Board and Community Preservation Advisory Board. Such reports shall include any interests or rights acquired pursuant to former Chapter 165 of the Town Code.

(7) Upon request, advise the Town Board regarding requests for consent or amendments and advise other local governmental board, bodies or agencies regarding applications involving lands with respect to which interests have been acquired pursuant to this Article IV;

(8) Advocate conservation-based development, which may include but not be limited to educating the public and large landowners on land protection strategies and opportunities, working with interested and willing landowners to help them achieve conservation goals.

(9) Seek additional funds from government and private sources to leverage funds available in the Open Space Fund.

(10) Develop and nurture relationships with key land use and conservation organizations, land trusts, planning boards, etc.

(11) Have such powers and exercise such duties as are set forth in this Article.

(12) Hold yearly informational meetings and provide written reports of activities to the Town Board on a regular basis.

§ 101-43. Open Space Fund

- A.** The Town of Gardiner Open Space Fund is hereby established.
- B.** Deposits into the Open Space Fund shall include revenues of the Town from whatever source and shall include, at a minimum, net proceeds of any bond issued for the purposes of this Article IV and 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, but excluding such moneys as may be deposited by operation of law or by order of the Town Board to the Community Preservation Fund established pursuant to Article I of Chapter 101 of the Town Code. This Fund shall not include any moneys required to be deposited in the Community Preservation Fund pursuant to Article 1 Section 101-2.
- C.** The Open Space Fund shall also be authorized to accept gifts on behalf of the Town. Interest accrued by monies deposited in the Open Space Fund shall be credited to the Open Space Fund.
- D.** In no event shall monies deposited in the Open Space Fund be transferred to any other fund or account.
- E.** Nothing contained in this Article 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 of any interest or right authorized by this Article. Monies from the Open Space 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 article.

§ 101-44. Purposes of the Open Space Fund

The purposes of the Open Space Fund shall be exclusively:

- A.** To implement the Town's open space planning and acquisition program;
- B.** To acquire interests or rights in real property for the preservation of agricultural lands and nonfarm open space lands within the Town;

§ 101-46 Alienation of open space program lands.

Before any lands acquired with moneys in the Open Space Fund are conveyed, the Town Board shall make a finding that said lands are not required for the open space purposes described in this Article IV and any net proceeds received as a result of such lands shall be deposited to the Open Space Fund.

§ 101-47 Preparation of proposals for grants .

- A. Upon announcement by state and/or federal grant funds or other available grants from not-for-profit or private sources, at least two Community Preservation Advisory Board members shall be selected to study the RFP (request for proposals) and make a recommendation to the Community Preservation Advisory Board 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 Community Preservation Advisory Board 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, the Community Preservation Advisory Board shall identify and recommend the proposals deemed most likely to qualify and to be recommended for Open Space Fund purposes.

§ 101-48 Acceptance of open spaces and areas.

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.

§ 101-49 Easement contracts.

The Town Board may adopt specimen conservation easements for agricultural lands and nonfarm open space, which easements shall be placed on file with the Town Clerk. Such specimen easements may be amended from time to time and are subject to negotiation which furthers program interests.

§ 101-50 Access to Town Attorney for legal opinions.

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

§ 101-51 Conflict with other provisions.

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