

Chapter 54, AGRICULTURAL AND OPEN SPACE PRESERVATION AND ACQUISITION

[HISTORY: Adopted by the Town Board of the Town of Warwick 11-8-2001 by L.L. No. 6-2001. Amendments noted where applicable.]

GENERAL REFERENCES

Blasting and explosives -- See Ch. 63.
Flood damage prevention -- See Ch. 89.
Subdivision of land -- See Ch. 137.
Tree and topsoil removal; grading and excavation -- See Ch. 150.
Zoning -- See Ch. 164.

§ 54-1. 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 emphatically stated it to be a most important state policy to provide for open space and to conserve, protect and encourage the improvement of agricultural lands, both for production of food and the preservation of such lands as valued natural and ecological resources. The Legislature has determined that the acquisition of open spaces and areas 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 policy and is a proper expenditure of public funds for public purposes.

B. The Town of Warwick is in complete accord with such policy as evidence in the Town of Warwick Comprehensive Plan adopted in 1999, Chapter 3.2, Agriculture, Section A - Purchase of Development Rights. The Comprehensive Plan recommends that a purchase of development rights (PDR) program be instituted in the Town as soon as possible. The Town Board further moved toward a local funding for the acquisition of open spaces and areas, particularly PDR, by placing the bonding proposition on the November 7, 2000, general election ballot. A majority of voters in the Town approved that proposition authorizing the expenditure of \$9.5 million for the acquisition of open spaces and areas, including, among other things, development rights. This chapter is intended to indicate generally and in some particulars the procedures which will be employed by the Town in its pursuit of its goal to protect and conserve agricultural lands, nonfarm open spaces and open areas.

§ 54-2. Definitions.

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

AG BOARD -- The Warwick Agricultural and Open Space Preservation Board.

AGRICULTURAL AND OPEN SPACE PRESERVATION FUNDS -- Includes all monies deposited in the fund established by § 54-5 hereof.

AGRICULTURAL LANDS -- Lands used in bona fide agricultural production located in an 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 Warwick 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.

NONFARM 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 conversation 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.

OPEN SPACE ACQUISITION BOND FUNDS -- The \$9,500,000 authorized by the referendum approved by the voters on November 7, 2000.

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.

§ 54-3. Agricultural and Open Space Preservation Board.

A. The former Town of Warwick Agricultural Advisory Board, hereinafter referred to as the "Ag Board," is hereby constituted as a continuing agency of the Town of Warwick.

B. It shall consist of seven members, each of whom shall be appointed by the Town Board. Its membership shall commence with four members of the currently existing Agricultural Advisory Board and one member from each of the three incorporated villages, appointed upon consultation with the villages. Each member shall serve for a term of five years, and terms shall be staggered so that there will be continuity in the membership.

C. A Chair shall be annually elected by the members of the Board and may succeed him/herself for additional terms not exceeding five years.

§ 54-4. Duties of Board.

The AG Board shall have the authority to:

A. Solicit applications from eligible landowners for PDR of both agricultural and nonfarm properties.

B.Encourage owners of lands contiguous with already preserved lands and/or presently agriculturally assessed lands, to submit application for PDR in order to establish/maintain a critical agricultural or open space mass.

C.Hold yearly informational meetings.

D.Offer help with the PDR application process.

E.Visit landowners who are potential applicants for PDR.

F.Monitor, or make provision therefor, each deed-restricted parcel yearly to insure that regulations of PDR are properly observed; file a written report on each parcel and notify owner, in writing, of any noted infraction.

G.Review any matters relating to development rights in particular and to agricultural matters in general as they relate to the Town.

H.Serve as a review board, in the case of agricultural PDR, for the granting of preliminary approval for the location, construction, or moving of agricultural structures on, to or within all lands on which development rights have been sold in conformance with the easement contract and prior to ordinary agency (whether Town or other) review and approval or permitting.

I.Promulgate, subject to Town Board approval, such procedural rules and regulations as may be necessary to carry out the intent of this chapter, and to administer its provisions, including evaluation and ranking of applicants for purchase of development rights.

§ 54-5. Agricultural and Open Space Preservation Fund.

A.The Town of Warwick Agricultural and Open Space Preservation and Acquisition Fund (the fund) is hereby established.

B.Deposits into the fund may include revenues of the Town from whatever source and shall include, at a minimum, Open Space Acquisition 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 a real estate transfer tax which may be established.

C.The fund shall also be authorized to accept gifts. 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 NYS Local Finance Law, of any acquisition 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 effectuating the purposes of this chapter.

§ 54-6. Purposes of fund.

A.The purposes of the fund shall be exclusively:

(1)To implement the Town's agricultural and 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.

B.The acquisition of interest and rights in real property under the fund shall be in cooperation with willing sellers.

§ 54-7. Acquisition of interest in property; public hearing and other requirements.

A.No interests or rights in real property shall be acquired pursuant to this chapter until a public hearing is held. However, nothing herein shall prevent the Town Board from entering into a conditional purchase agreement before a public hearing is held.

B.No land or rights in land shall be acquired in a village within the Town unless such village has consented to such acquisition.

C.Any resolution of the Town Board approving an acquisition of land pursuant to this chapter shall include a finding that such acquisition was the best alternative for the protection of such lands available for the Town, that such acquisition was in furtherance of goals for the equitable allocation of open space acquisition bond funds (if applicable), and that acquisition was in furtherance of other applicable program goals.

§ 54-8. Alienation of agricultural and open space program lands.

A.No lands acquired pursuant to this chapter shall be alienated, except by vote of a super-majority (a majority plus one) of the Town Board, subject to permissive referendum, pursuant to the procedures found in Article 7 of the Town Law. In the event that the affirmative vote of the Town Board to alienate such lands is less than unanimous, it shall be deemed that the Town Board has referred such alienation to referendum by its own motion, and a referendum shall be held pursuant to the procedures set forth in the Town Law.

B.The Town Board may purchase real estate that is deemed to be threatened by development, in order to protect a critical mass of farmland and/or open space. No open space acquisition bond funds may be used for such purposes. Such land shall then be sold (alienated) within one year of acquisition, and shall bear the conservation easement which all other lands carry that have been stripped of their development rights. To the extent that the funds used to purchase such land come from the fund, the net sales price of such land will be returned to the fund. This sale shall not be subject to the requirement of Subsection A above.

§ 54-9. Evaluation and ranking of applicants.

A.Agricultural evaluation. The AG Board shall enlist at least three, and up to five, farmers from outside the Town of Warwick to do on-site review of farms and facilities, to interview applicants, to study applications, to determined criteria values from guidelines, average out values, and arrive at a ranking of applicants and submit results to the Ag Board.

B.Nonfarm open space evaluation. Three members of the Ag Board shall constitute an evaluation and ranking committee for nonfarm applicants.

§ 54-10. Preparation of proposal for PDR grants to NYS Department of Agriculture and Markets.

A.Upon announcement, by the NYS Department of Agriculture and Markets, of a new round of grants for PDR, two AG Board members shall be selected to study the RFP (request for proposal), check all applications for completeness, draft the proposal, and submit by the deadline to the Department of Agriculture and Markets. The AG Board may, to the extent appropriated funds are available, hire a grant writer to be retained by the Town in order to facilitate and enhance the receipt of grants.

B.After evaluating and ranking the farms that apply for PDR funding each year, those that rank within the top 15% of all previous applicants shall be submitted for state funding (and federal funding, when available). The probability of local farms winning in statewide competitive awards is much greater if only the Town's top farms are entered. Entering the top farms is important since this relieves the burden from

local funding and expands the total farmland that can be preserved. There are several inducements for the applicant to apply for state funding. First, the state will make a lump sum payment. Second, in the event that the appraisal comes in at less than the contract amount, the state will reimburse, up to the limit of such contract amount, 75% of the cost for the certified appraisal and survey, for the transactional services of the Town's attorneys, for the stewardship escrow, and for the title search, insurance and recording fees. This reimbursement is subject to a cap of \$25,000. (These reimbursements are subject to the continuation of such policy by the Department of Agriculture and Markets). Finally, the Town of Warwick will supplement up to 25% of the amount of these items. Personal attorney's fees are not reimbursed.

C.As an alternative to the above incentive the Town of Warwick will supply, from available local PDR funds, to the successful applicant for state funding, 10% of the local match (i.e., 2.5% of the total PDR value) or \$15,000, whichever is the lesser amount.

§ 54-11. Gifting of open spaces and areas.

The Town Board may accept the gift of 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 agricultural and open space preservation program.

§ 54-12. Allocation of open space acquisition bond funds.

A.The Town Board shall distribute the authorized open space acquisition bond funds in a manner consistent with the contribution from each school district. To determine the amount, the Town shall consult with the Town Assessor concerning the taxable valuation in each of the following school districts: Greenwood Lake Union Free School District and Tuxedo Union Free School District combined; Warwick Valley School District; and Florida Union Free School District.

B.The Town will use the appropriate portion of the authorized open space acquisition bond funds to purchase property, preferably parkland, in the school districts of Greenwood Lake and/or Tuxedo, preferably, but not limited to, property not currently on the tax rolls.

C.If the Town purchases village-owned property, the Town and village will enter into a purchase agreement to specify the types of uses for which the funds can be used to preserve or enhance open space. Any purchase agreement should also provide that the Town will not be required to maintain or develop the property unless agreed upon by the parties.

§ 54-13. Easement contracts.

The Town Board shall adopt specimen conservation easements for agricultural and nonfarm lands, which easements shall be made appendices to this chapter. EN Such easements may be amended from time to time and are subject to negotiation.

§ 54-14. Access to Town Attorney for legal opinions.

The AG Board shall have access to the Town Attorney and/or the Deputy Town Attorney in matters requiring legal opinion.

§ 54-15. 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 development rights in agricultural as well as nonagricultural lands.