

RESOLUTION NO. #28
Town of Olive

**A RESOLUTION IN SUPPORT OF THE LAND ACQUISITION
REDUCTION RECOMMENDATIONS IN THE 2020 AUGUST
NATIONAL ACADEMIES (“NAS”) EXPERT PANEL REPORT**

WHEREAS, in August, 2020, the National Academies (“NAS”) Expert Panel published its report entitled, *Review of the New York City Watershed Protection Program*, which recommended that expenditures in the land acquisition program be reduced to fund other programs that will lead to more direct improvements to water quality. NAS Report, p.385. NAS recommended that **the City be provided flexibility to implement an optimal variety of programs that would focus watershed management actions on the most valuable lands for water quality protection and that it shift funding and emphasis from acquiring large parcels in the fee-simple and conservation easement programs to the protection of riparian lands on critical areas of tributary streams through programs that provide an opportunity to simultaneously address community needs and watershed protection. Programs which provide a “financial mechanism” to promote community well-being and economic vitality in the watershed while promoting the protection of high potential water quality impact areas were specifically encouraged.** See NAS Report p. 215-216 [discussing the NYC Flood Buyout Program]

WHEREAS, the fundamental principle of the 1997 New York City Watershed Memorandum of Agreement (the “**MOA Watershed Objective**”) is the following: “[T]he parties recognize that the goals of drinking water protection and economic vitality within the watershed communities are not inconsistent and it is the intention of the parties to enter into a new era of partnership to cooperate in the development and implementation of a watershed protection program that **maintains and enhances** the quality of New York City drinking water supply and **the economic vitality and social character of the watershed communities**”; and

WHEREAS, the 1997 New York City Watershed Memorandum of Agreement (“MOA”) also defined the MOA Land Acquisition Objectives as follows: “the parties agree that the City’s Land Acquisition Program, the City’s watershed regulations, and the other programs and conditions contained in this agreement, when implemented in conjunction with one another, **would allow existing development to continue and future growth to occur in a manner that is consistent with the existing community character** and planning goals of each of the watershed communities; and that the City’s land acquisition goals **ensure that the availability of developable land in the watershed will remain sufficient to accommodate projected growth** without anticipated adverse effect on water quality **and without substantially changing future population patterns** in the watershed communities” (hereinafter “**Land Acquisition Objectives**”); and

WHEREAS, the City’s Land Acquisition Program is premised on the principal that surface runoff from impervious surfaces and concentrated human activity poses a contamination threat to the City’s water supply. In developing the City Land Acquisition Program, the parties were concerned that the vast amount of open space within the West of Hudson Watershed

created the potential for new significant adverse development in an unfiltered watershed. The City’s Land Acquisition Program was a tool to prevent and control such development; and

WHEREAS, in 1997 when the parties executed the MOA, a small percentage of the watershed lands within the New York City Watershed was under New York City control. Twenty years later, according to the October 12, 2017 Catskill Watershed Corporation Developable Land Analysis Report (“*CWC 2017 Report*”), 53% of the land within the Town of Olive is land protected from development. 73% of the land within the Town of Olive is not suitable for development. The *CWC 2017 Report* indicates that there only 2,548 acres of available developable land within the Town of Olive (less than 2.1% of the total land area).

| Town | A. Total Area (Acres) | B. Protected Land | C. Percent Land Protected | D. Non- Protected Land | E. Undevelopable Land | F. Percent Undevelopable | G. Developable Land (1) | H. Acres of Available Developable Land | | I. Percent of Total Land Area (1) |
|-------|-----------------------------|-------------------------|------------------------------------|---------------------------------|-----------------------------|--------------------------------|-------------------------------|--|-----|--|
| | | | | | | | | (1) | (2) | |
| Olive | 42,065 | 22,305 | 53% | 19,760 | 14,404 | 73% | 5,356 | 2,548 | 871 | 2.1% |

Notes:
 (1) Town-wide
 (2) Watershed only

WHEREAS, the 2017 City of New York Filtration Avoidance Determination (“FAD”) requires that an application for new Water Supply Permit to succeed the 2010 WSP be filed by June 2022. The City of New York must also develop a new Long-Term Land Acquisition Plan, which will cover the period 2023-2033 and consider the findings and recommendations of the National Academies (“NAS”) Expert Panel review; and

WHEREAS, with the assistance of the Coalition of Watershed Towns and CWC, Delaware County has developed an Alternative Land Acquisition Program Option (the “Alternative Option”) that provides an opportunity for impacted communities to provide robust/enhanced protection of environmentally sensitive lands in a manner that does not rely on one-time payments for fee title acquisitions of large parcels or conservation easements that burden land in perpetuity. The Alternative Option focuses on environmentally sensitive lands (such as riparian or stream buffers) which directly contribute to water quality and provides for a fixed-term annual rental payment to the landowner; a model that has proven to be effective in Delaware County; and

WHEREAS, the Alternative Option would allow landowners to retain ownership of their property while receiving periodic payments that reflect the water quality protection value their property provides. The Alternative Option provides a financial mechanism to promote community well-being and economic vitality while promoting water quality, thereby achieving the balance of interests required by the MOA and recommended in the NAS Report. The County envisions an impacted municipality would make a determination and a commitment to participate in the Alternative Option program as a way to provide enhanced protection of sensitive lands in lieu and as a substitute for the continuation of the traditional DEP Land

Acquisition Program. The municipal commitment would be for a period of years (e.g., 10 years) during which time, Land Acquisition Program would be suspended within that community; and

WHEREAS, DEC recently announced it will make a determination to expand the Stream Corridor Acquisition Program (“SAP”) beyond the Schoharie Basin to the entire watershed, that this determination is not subject to review under the State Environmental Quality Review Act (“SEQRA”) and does not require due process or a modification to the 2010 Water Supply Permit. According to DEC, homeowners will have the ability to request that SAP acquisitions of individual parcels in excluded hamlet areas and hamlet expansion areas be approved on a case-by-case basis by making direct appeals to the Town/Village Board. This may include both vacant lots and improved lots, both of which are eligible for SAP acquisition under the 2010 Water Supply Permit (although DEC states that the purchase of improved lots is not intended); and

WHEREAS, the Town maintains the potential impacts that could result from the continuation and potential expansion of SAP must be reviewed under SEQRA. There has been a significant change in circumstances since the SAP program was first envisioned and implemented under the 2010 Water Supply Permit. This change in circumstances requires the preparation of a supplemental Environmental Impact Statement (EIS) in order to identify and take a “hard look” at the impact this expansion of the land acquisition program would have on the environment and the sustainability of our community; and

WHEREAS, fee acquisitions under SAP are subject to Section 82 of the MOA which requires the City to grant to NYSDEC a conservation easement to ensure that such land is “held in perpetuity in an undeveloped state in order to protect the watershed and New York City’s drinking water supply.” The Conservation Easement required by DEC under Section 82 of the MOA prohibits in perpetuity the following activities on the acquired property:

- “construction of any new ... structures normally requiring a building code permit”;
- “storage of petroleum ..., hazardous materials”
- “excavating, extraction, grading, or removal of soil, sand and gravel”
- “use of snowmobiles, dune buggies, motorcycles, all-terrain vehicles or other motorized vehicles recreation purposes”
- “the expansion of any existing or construction of any new paved driveways, roads, and parking lots”
- “the commercial, residential or industrial use”
- “except in accordance with Article 49 of the ECL, the siting or routing of any facilities required for ... the transmission, or distribution of **gas, electricity, water, telephone, or cable television services** on, *over* or under the Protected Property”
- “the commercial, residential or industrial use of the Protected Property (ies) in such a manner that: (i) causes the introduction of sediments, ... or other pollutants to any watercourse or wetland on the Protected Property (ies) that may adversely effect the quality of such watercourse or wetland; (ii) interferes with or disturbs open space, vegetated areas or steep slopes on the Protected Property(ies); or (iii) is otherwise inconsistent with the purposes of this Easement.”

WHEREAS, the Town requests that the DEC, the Catskill Center and DEP identify and evaluate the potential adverse impacts on municipal and private functions if the City encumbers large sections of stream buffer/ corridors with restrictive conservation easements in perpetuity. Specific areas of concern include impacts on the following:

- Installation and upgrade of electrical, water, gas, telephone, broadband/cable lines as needed to provide basic utilities
- Maintenance, upgrade, expansion, widening, safety improvements to existing roads and extension of existing roads.
- Installation, expansion, and replacement of communication towers (including the necessary utilities)
- The siting, maintenance, and expansion of stream crossings
- Flood mitigation projects
- Renewable Energy Projects

WHEREAS, on October 27, 2021, the Delaware County Board of Supervisor passed Resolution No. 162 entitled: **DELAWARE COUNTY REQUESTS THAT A MORATORIUM ON NEW PURCHASE CONTRACTS FOR FEE TITLE AND DEP CONSERVATION EASEMENTS, BE IMPLIMENTED IN DELAWARE COUNTY PENDING A COMPREHENSIVE REVIEW OF THE LAND ACQUISTION PROGRAM TO IDENTIFY THE NEED FOR THE CONTINUATION OF LAND ACQUISTION, THE BENEFITS OF LAND ACQUISTION, THE IMPACT OF LAND ACQUISTION ON COMMUNITY SUSTAINABILITY AND THE OTHER TOOLS AVAILABLE TO ACHIEVE MOA LAND ACQUISTION OBJECTIVES.** That resolution identifies and describes the “Change in Circumstances” since the SAP was first envisioned in the 2007 FAD. The Town supports Delaware County Resolution No. 162.

NOW, THEREFORE, BE IT RESOLVED the Town of Olive Town Board joins in the Delaware County Board of Supervisors petition to DEC, DOH and DEP requesting the following relief:

- (1) The FAD requires application for a WSP to succeed the 2010 WSP is required by June 2022 and that the City develop a new Long-term Land Acquisition Plan, which will cover the period 2023-2033 and which will consider the findings of the National Academies Expert Panel review. Given the uncertainties created by the change in circumstances, effective January 1, 2022 and extending through completion of the permitting process, the City refrain from entering into new contracts to purchase fee title and/or conservation easements under the Land Acquisition Program within the Town of Olive.
- (2) In developing the Long-term Land Acquisition Plan for the period 2023-2033 and the WSP renewal application due June, 2022, that DEP limit its land and conservation easement acquisition within the Town to WAC Conservation Easements, flood mitigation projects, stream protection/management, the Delaware County Alternative Pilot Land Acquisition Proposal and a voluntary municipally approved SAP Program.

BE IT FURTHER RESOLVED that this resolution be sent to New York Governor Kathy Hochul, US Congressman Antonio Delgado, NYS Senator Peter Oberacker, NYS Assemblymen Kevin Cahill, EPA Region 2 Administrator Lisa Garcia, NYSDEC Commissioner Basil Seggos, NYCDEP Commissioner Vincent Sapienza and NYSDOH Commissioner Mary Bassett

AND MOVES ITS ADOPTION

Motion made by:

Seconded By:

| | Aye | Nay | Absent |
|-----------------------------|-------|-------|--------|
| Jim Sofranko, Supervisor | _____ | _____ | _____ |
| Drew Boggess, Board Member | _____ | _____ | _____ |
| Scott Kelder, Board Member | _____ | _____ | _____ |
| David Edinger, Board Member | _____ | _____ | _____ |
| Victoria Read, Board Member | _____ | _____ | _____ |

Dated this 14th day of December, 2021

Dawn Giuditta, Town Clerk

State of New York
County of Ulster

I Dawn Giuditta, Clerk of the Town of Olive, do hereby certify that the above is a true and correct copy of a resolution adopted by the Town Board on the ____ day of _____, 2021 and the whole thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Town Board of the town of Olive, New York this ____ day of _____, 20__.