

TOWN OF HARPERSFIELD

RESOLUTION NO. 012 OF THE YEAR 2021

At the regular meeting of the Town of Harpersfield held on December 8, 2021, Councilmember Robert Reeve Jr. offered the following resolution and moved its adoption:

TITLE: RESOLUTION OF THE TOWN BOARD OF THE TOWN OF HARPERSFIELD IN SUPPORT OF THE DELAWARE COUNTY BOARD OF SUPERVISOR'S RESOLUTION NO. 162.

WHEREAS, on October 27, 2021, the Delaware County Board of Supervisors 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 ACQUISITION PROGRAM TO IDENTIFY THE NEED FOR THE CONTINUATION OF LAND ACQUISITION, THE BENEFITS OF LAND ACQUISITION, THE IMPACT OF LAND ACQUISITION ON COMMUNITY SUSTAINABILITY AND THE OTHER TOOLS AVAILABLE TO ACHIEVE MOA LAND ACQUISITION OBJECTIVES.

WHEREAS, the Harpersfield Town Board ("Town Board") has reviewed Resolution No. 162 in detail and by this resolution is indicating its support and its adoption of the facts and principles set forth herein. For purposes of transparency, this resolution restates the rationale and conclusion from the perspective of the Town of Harpersfield ("Harpersfield"). A copy of Resolution No. 162 is also attached hereto.

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, approximately 11% of the watershed lands within Delaware County were under New York City and/or New York State control. Twenty-three years later, according to the December 2020 Land Acquisition Report, 28.4 % of the watershed lands within Delaware County are under New York City and/or New York State control and such control is closing in on the 30% benchmark (as suggested in the 2012-2022 Long-Term Land Acquisition Plan) when memorandum of contract properties are included; and

WHEREAS, on October 31, 2017 Delaware County issued the following report: New York Land Acquisition Town Level Assessment 2017: Delaware County Evaluation and Response (“Delaware County 2017 Report”), which found a substantial number of Delaware County Towns had an insufficient amount of remaining developable land to “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 those communities. The report concluded the “City’s land acquisition goals for those communities did not ensure... the availability of developable land... will remain sufficient to accommodate projected growth” and thus the continuation of City’s land acquisition could “substantially changing future population patterns...”; and

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, in August 2020, the NAS 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 the 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, 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. 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, in April 2018, the Delaware County Board of Supervisors passed Resolution No. 74 demanding relief from the City Land Acquisition Program to ensure the continued availability of developable land to accommodate future growth and prevent substantial changes to future population patterns. The DEP, in consultation with DOH, denied Delaware County’s request but agreed that the Delaware County Alternative Option has merit and deserves further discussion; and

WHEREAS, the government stakeholders concurred that the appropriate opportunity for further discussion of the Alternative Option would be in the proceeding to amend the 2010 City of New York Water Supply Permit, which may provide for the expansion of the current Stream Acquisition Program (“SAP”) beyond the Schoharie Basin and the development of a new Long-Term Land Acquisition Plan for the period 2023-2033. The findings of the NAS Expert Panel will be considered as part of this proceeding and Delaware County will be provided an opportunity to seek a permit modification adding its Alternative Option program to the Water Supply Permit. All parties reserved whatever rights they have to oppose or support such a modification; and

WHEREAS, DEC recently announced it will make a determination to expand 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 would result from an extension of SAP to the entire watershed (and resulting expansion of the land acquisition program) 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 NYS DEC 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 affect 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 proceeds with an expansion of SAP beyond the Schoharie basin and 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.

NOW, THEREFORE, BE IT RESOLVED, the Town of Harpersfield Town Board joins in the Delaware County Board of Supervisors petition to DEC, DOH and DEP requesting for 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 Harpersfield;
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 SAP plan.

BE IT FURTHER RESOLVED, that this resolution be sent to New York Governor Kathy Hochul, US Congressman Antonio Delgado, NY Senators, NYS Assemblymen Crouch and Miller, EPA Region 2 Acting Director Walter Mugdan, NYS DEC Commissioner Basil Seggos, NYC DEP Commissioner Vincent Sapienza and NYS DOH Commissioner Mary Basset.

Seconded by Councilmember Matthew J. Taylor with the vote as follows:

Adopted:	James Eisel Sr., Supervisor	Aye.
	Robert Reeve Jr., Councilmember	Aye.

Adopted: Matthew J. Taylor, Councilmember Aye.
Patrick F. Funk, Councilmember Aye.
Lisa M. Driscoll, Councilmember Aye.

State of New York

County of Delaware

Town of Harpersfield

I, Linda E. Goss, Clerk of the Town of Harpersfield, do hereby certify that the above is a true and correct copy of a resolution adopted by the Town Board on the 8th day of December, 2021 and the whole thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Town Board at Harpersfield, New York this 16th day of December, 2021.

A handwritten signature in cursive script, reading "Linda E. Goss", is written over a horizontal line.

Linda E. Goss, Town Clerk

Town of Harpersfield