

Chapter 70

AGRICULTURAL LANDS PRESERVATION

[HISTORY: Adopted by the Town Board of the Town of Southold 3-13-1984 by L.L. No.2-1984. Amendments noted where applicable.]

§ 70-1. Title.

This chapter shall be known and may be cited as the "Agricultural Lands Preservation Law of the Town of Southold."

§ 70-2. Purpose.

The Town Board of the Town of Southold finds that the acquisition of development rights in lands located in the Town of Southold and used, or that can be used, in bona fide agricultural production will conserve, protect and encourage the improvement of prime agricultural lands, ~~both for the agricultural production of food and the preservation of open space~~, and is in the public interest and a proper public purpose of the Town in accordance with the findings and determinations of the New York State Legislature, as set forth in § 247 of the General Municipal Law.

§ 70-3. Definitions.

As used in this chapter, the terms used herein are defined and the same as the agricultural and related definitions in Chapter 280-4 Definitions as follows:

AGRICULTURAL LANDS — Lands used, or that can be used, in bona fide agricultural production.

AGRICULTURAL PRODUCTION — The production for commercial purposes of crops, livestock and livestock products, mariculture and aquaculture crops, but not land or portions thereof used for processing and/or retail merchandising on-farm direct marketing of such crops, livestock or livestock products, etc.—Land used in agricultural production shall also include fences, equipment storage buildings, livestock barns, greenhouses, parking, irrigation systems and any other structures and equipment, gear and the like used exclusively for any agricultural purposes and incidental uses such as, but not limited to, agricultural business office, bathroom facilities and dining room/mess hall for farm workers, farm worker housing, etc. to support the Farm Operation as defined in 280-4.

ALIENATION — The transfer of any development right owned by from the Town of Southold to another.

COMMITTEE — The Southold Town Land Preservation Committee.
[Amended 6-18-1991 by L.L. No. 13-1991]

DEVELOPMENT RIGHT — The permanent legal interest or right to prohibit or restrict the use of land for any non-agricultural uses not subject to review by any Town agency. purpose other than agricultural production.

STRUCTURE — Anything requiring a building permit from the Town of Southold shall be considered a structure, constructed or erected in, on or under the ground or attached to anything having a location, on or under the ground, including fences.

§ 70-4. Acquisition of development rights.

- A. Upon authorization by the Town Board, ~~the Supervisor shall~~ Town may solicit offers and accept applications for the sale to the Town of development rights in such agricultural lands as may be recommended by the Committee.
- B. Upon the receipt of such offer or offers, the Town Board shall cause an appraisal or appraisals to be made of the market value of the development rights being offered. Simultaneously, the Seller (Grantor) may, and should provide its own appraisal.
- C. After receipt of such appraisal or appraisals, the Town Board shall hold a public hearing on the question of the acceptance of such offer or offers.
- D. Within 60 days after such hearing, the Town Board shall adopt a resolution either accepting or rejecting such offer or offers.

§ 70-5. Alienation of development rights.

- A. Development rights acquired by the Town pursuant to the provisions of this chapter shall not thereafter be alienated, except upon the affirmative vote of a majority of the Town Board after a public hearing thereon and upon the approval by the electors of the Town voting on a proposition submitted at a special or biennial Town election. No subsequent amendment of the provisions of this subsection shall alter the limitations imposed upon the alienation of development rights acquired by the Town prior to any such amendment, except as may be amended by mutual agreement only if it is to the benefit of agricultural uses, purposes, and functions in the future. The instrument of conveyance, i.e. the easement, shall not include the ability and shall restrict the right of any owner at the time of the development rights sale, or any future owner, thereafter, from selling, gifting or any other separation, all the agricultural rights, apparent or real, from that land.
- B. The instrument of conveyance (the easement) transferring the development rights to the Town of Southold shall be executed by the Supervisor on behalf of the Town of Southold and the grantors and shall contain a covenant specifically setting forth the limitations on the alienation of the development rights only, which shall conform to the terms in Chapter 70, and the limitations on the use and enjoyment of the estate or interest reserved by the grantor as the same are set forth as of the date of the contract for the sale of said development rights.

C. § 70-6 Land Preservation Committee. [Amended 6-18-1991 by L.L. No. 13-1991]

- (1) The Committee shall consist of seven qualified members to be appointed by and serve at the pleasure of the Town Board. The Chairman of the Committee shall be designated by the Town

Board^[js1]. At least three members shall have extensive experience with commercial agriculture. At least two members shall have experience with non-agricultural recreational open space. At least one member shall serve concurrently on both the Southhold Town Agricultural Advisory Committee and the Land Preservation Committee.

(2) Duties of the Committee.

(a) (A) The Committee shall perform the following duties:

- [1] To recommend to the Town Board agricultural lands in which the development rights should be acquired by the Town.
- [2] To review all only those matters relevant to development rights purchases, and the agricultural economy in general.
- [3] ~~To serve as a review board for the granting of permits for the construction, reconstruction and additions of and to structures in or on agricultural lands in which the development rights have been acquired by the Town.~~
- [4] To promulgate such rules and regulations as may be deemed necessary to govern the administration, procedures and duties of the Committee, which rules and regulations shall not become effective until approved by the Town Board.
- [5] ~~To^[js2] prepare, amend and maintain appropriate maps delineating agricultural lands, lands in which development rights have been acquired, agricultural lands in which development rights are proposed to be acquired and such other information as may be deemed appropriate.~~
- [6] To perform such other duties and functions as may, from time to time, be directed by the Town Board.

(B) The Committee shall be authorized to incur such expenses in the performance of its duties as shall be appropriated therefor by the Town Board.

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§ 70-7 Severability.

Should any provision of this chapter be adjudged invalid by a court of competent jurisdiction, such adjudication shall not affect the validity of any other provision of this chapter.

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**DEPARTMENT OF LAND PRESERVATION
TOWN OF SOUTHOLD**

TO: Supervisor Russell and Town Board

FROM: Sam McCullough, Chair
Land Preservation Committee

DATE: March 19, 2021

RE: **Agricultural Advisory Committee Chapter 70 proposed revisions**

The AAC Document was forwarded to LPC on 3/10/2021 for review. The document was reviewed at the 3/16/2021 LPC meeting.

Committee Members were asked for their comments and all comments are shown below:

§ 70.2. Purpose

- LPC agrees to addition of “or that can be used”.
 - Question was raised as to whether or not this change is consistent with GML 247.
- LPC agrees to addition of “agricultural” before the word “production”.
- LPC agrees to remove “of food”.
- LPC questions the removal of “and the preservation of open space”.
 - Existing language “preservation of open space” should not be removed. Definition of open space is necessary, with definition clarifying that open space includes various forms of agriculture.
- Preservation of community character is important and should be included in Purpose.

§ 70.3. Definitions

- The proposed additional language “... the terms used herein are defined and the same as the agricultural and related definitions in Chapter 280-4 Definitions” is not correct. The proposed definitions are not the same as those in existing Chapter 280-4 Definitions. If the intent was for consistency with Chapter 280-4, the intent is not met.
- AGRICULTURAL LANDS
 - LPC agrees to addition of “or that can be used”
However, question raised as to whether or not this change is consistent with GML 247
- AGRICULTURAL PRODUCTION
 - LPC is not in favor of the definition as proposed.

The proposed revision, specifically the revision allowing for processing and/or on-farm direct marketing, is a significant change from the current definition.

The LPC feels that direction is needed from the Town Board regarding whether processing and on-farm direct marketing should be allowed within preserved farmland. If the Town Board supports processing and on-farm direct marketing within

TPDR lands, the LPC recommends that in-depth review and discussion take place, including but not limited to:

- What types of uses will be allowed if the definition is revised?
 - Are there unintended consequences?
 - Should the Town limit the scope of uses on TPDR lands in any way?
- ALIENATION
 - LPC defers to legal opinion regarding change in wording to “owned by”
 - DEVELOPMENT RIGHTS
 - LPC recommends against the proposed revision. The proposed language is unclear, ambiguous and confusing.
 - STRUCTURE
 - Proposed definition is not consistent with Zoning Code 280-4 Definitions. Existing Zoning definition should be reviewed if intent is consistency.
 - Proposed revision adds “...requiring a building permit...”
 - Question raised as to if there are uses (i.e. farm stand / on-farm direct marketing?) requiring a type of permit not classified as a building permit. If so, strike “building” and re-word to “Anything requiring a permit from the Town of Southold Building Department shall be considered a structure.”
 - Some LPC members felt existing Structure definition should remain as written.

§ 70.4. Acquisition of development rights.

- A.
 - LPC agrees to proposed changes.
- B.
 - LPC opposed to proposed language. Language is not appropriate Code language and without a process for what the Town would do with the Seller’s appraisal (process is not recommended) is meaningless. Language as written does not prohibit Seller from obtaining an appraisal.

§ 70.5. Alienation of development rights.

- A.
 - LPC members strongly opposed to the “except as may be amended by mutual agreement....” proposed change and questioned whether this proposed change is legal, particularly with respect to GML 247?
 - LPC members strongly opposed to the proposed sentence “The instrument of conveyance...”
 - LPC member commented that no town easement should include language that specifically impedes property owner’s rights.
- B.
 - LPC agrees to strike-out; however, clarification as to what the intent is of the proposed wording is needed, as the intent is not clear.
 - LPC feels that there should be some allowance in Code for placing additional conditions into easements under certain circumstances, though not in most cases.

§ 70.6. Land Preservation Committee

- (1)
 - LPC does not agree to addition of “qualified” since Town Board already has the right to appoint anyone deemed qualified to serve on the committee, and does not agree to addition of wording regarding Committee classification/experience requirements.
 - LPC agrees to change from “Chairman” to “Chair”.
 - LPC does not agree to “...one member shall serve concurrently...”
Committees members as a whole should work together to share information.
Each committee has an appointed Town Board Liaison, perhaps Liaison should be the same for both Committees?
- (2) Duties of the Committee.
 - [2] LPC does not agree to changes.
 - [3] LPC does not agree to changes.
LPC does not agree that review by the Land Preservation Committee should be eliminated.
LPC agrees existing language is not consistent with current practice and should be revised.
The current practice is for the LPC to review requests for uses on TPDR lands to ensure that such uses are consistent with and do not derogate from or defeat the purpose and terms of the recorded easement.
 - [5] LPC agrees to deleting this paragraph, since the Town has GIS Staff preparing/maintaining maps for the Town; however, the LPC should not be prohibited from preparing maps separate from those prepared/maintained by Town Staff, or having access to such maps, for uses as may be deemed appropriate by the LPC.