

Community preservation

New taxes are not every taxpayer's cup of tea, especially in the era of New York State's two percent cap on increasing a tax levy. But there can be method to this madness. For decades New York State Republicans controlled the state senate, the Democrats the state assembly and more often than not the governorship. The Republicans would only go along with Democratic spending programs that were combined with local control and home rule. This led to some very interesting compromises.

A bill passed in the waning hours of the 2019 session of the state legislature last week was a ghost from that era. It added Ulster to 2007 state legislation listing the counties whose municipalities were permitted to impose an extra tax on certain property sales in order to preserve aspects of community character of importance to them. The legislative bill, as yet unsigned by governor Andrew Cuomo, was "happily" sponsored by state senator Jan Metzger and backed by assemblymember Kevin Cahill. It has several intriguing home-rule wrinkles.

Not many taxes are optional. This one is. It is opt-in legislation. In order to establish a community preservation fund financed by a tax on some transfers of real estate, a community has to decide that it wants to adopt that tax — that is, to opt in. The jurisdiction's top elected body has to vote for it, and the voters of the community then have to approve the program in a referendum. The original legislation specifies an exemption from the added taxes of properties selling below the median residential price.

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Though there is an upper limit of two percent on the transfer tax, each jurisdiction can set its own tax level. Red Hook, for instance, exempts the first \$100,000 of value, making the tax more progressive, and mandates a tax of three-quarters of one percent. Other local formulae, such as applying it only to million-dollar purchases, are possible.

The original 2007 legislation to which Ulster County is now signed on to requires

jurisdictions that opt in to specify how they can spend the funds they accumulate. There's a community preservation project plan, and an advisory committee reviews priorities and spending decisions.

An important new tool

We're talking about real money. Most of the original opt-in jurisdictions have accumulated and spent millions of dollars. According to Red Hook supervisor Robert McKeon, the preservation fund in his town has raised over three million dollars since its establishment. Red Hook has secured development easements over 2800 acres of farmland. It presently has \$1.4 million in the bank and has a couple of projects under consideration.

The tax on property transfers is just one of several sources of income available for community improvement, McKeon emphasized. Fund commitment attracts other sources of money. The county, state and federal governments have participated in funding. Local land trusts and regional environmental organizations like Scenic Hudson and the Open Space Institute have been active partners. Owners of agricultural land and open space have been willing to make their own contributions to the purchase of development rights.



A wide variety of community resources, the 2007 state legislation adopted just prior to the Great Recession's economic shock said, were "becoming at risk and endangered due to the natural progression of growth and development." The enabling legislation was written broadly enough to permit the use of a community preservation fund for a great variety of purposes both environmental and cultural: parks, recreational areas, nature preserves, open space, agricultural lands, exceptional scenic views, aquifer recharge areas, beachfront, shoreline, wetlands, wildlife refuges, waterways and river areas, forest lands, and historic places and properties. According to my reading, the legislation even allows a contribution to certain affordable-housing projects. The legislative purpose was "to assure the enjoyment and survivability [of community assets] for current and future generations."

Not an easy path to adoption

This year, Chester in Orange County decided to seek to pass community preservation legislation. Until then, no Hudson Valley community had signed on through stand-

alone town legislation since Red Hook and Warwick did. A consortium of five Long Island towns have also been participants in similar land acquisition legislation since the 2000s. If the early participants have been happy with what they have accomplished under this approach — and they are — why haven't others joined?

That may have been what Jen Metzger, the new state senator from Rosendale, may have been wondering when she talked to New Paltz town supervisor Neil Bettez and county legislator Jim Delaune, among others. Metzger chief of staff Leslie Berliant noted that the Ulster legislature's Economic Development Committee had passed a resolution of support. "Ulster County really wanted this legislation," Berliant said.

That's not the whole story. The resolution was withdrawn from a vote of the full legislature. Delaune, one of its sponsors, said he wasn't sure it had the votes to pass. Kingston Republican Brian Woltman, who voted for it because "I thought it was a good law," found he was the sole member of his caucus to support it.

Rich Gerentine, retiring from the county legislature after 28 years of service at the end of this year, was the only negative vote in opposing support for the original legislation in 2007. "We're overtaxed," the Marlboro legislator said. "It's still a tax, and that's why they're doing it." He particularly criticized the legislation's impact on first-time homebuyers.

Orange County was originally going to be included in this year's legislation. It wasn't, because freshman state senator James Skoufis reportedly backed off his support after vociferous opposition from his constituents, led by the county's real-estate interests. "He was beat up on every level," explained a local politician in the know.

Robert McKeon in Red Hook said that opposition from his local real-estate community, which was strong when the 2007 legislation was passed, has since abated. "Once you are overdeveloped," he said he had sought to convince them, "will people want to move into your community?"

Just the beginning?

"I'm a big proponent," said New Paltz town supervisor Neil Bettez, who sees the community preservation legislation as potentially transformative. "The one thing we can do is to preserve open space."

The towns of New Paltz and Gardiner share a common geography. Though some parts of the eastern part of both towns have environmentally significant habitats, they are also susceptible to small-lot residential subdivision. The sections west of the Wallkill River contain rich alluvial farmland allowing a footpath to the Shawangunk Ridge, with its long traditions of mountain-house hospitality, carriage roads, rock climbing, unique species, sky lakes and visual integrity. Recently, the River to Ridge Trail (R2R) has sought to connect a complex variety of immensely popular protected and recreational resources.

In an interview after the state legislature had ended its session, state senator Metzger said that most of the support for the new state legislation affecting Ulster County had come from the towns of New Paltz and Gardiner, where she said there was acute awareness of the need to protect open space. "Open space and farmland protection are part of our heritage," said Delaune, whose legislative district includes part of New Paltz and Esopus.

Bettez pointed out that the legislation could potentially be used to protect a variety of valued community resource, including historic houses, aquifer recharge areas and farmland easements. The Benjamin Center at SUNY New Paltz, he added, had published a paper concluding that “open space more than pays for itself” in increased property values.

Red Hook supervisor Robert McKeon said the same thing about that community’s purchase of agricultural development rights.

Proponents of the legislation hope that it will have a bright future, and opponents worry about that same prospect. Andy Bicking, director of policy and special projects at Scenic Hudson and a strong supporter, sees the available new law as an asset that will make it possible for local governments to invest in amenities that will increase quality of life and pride in community.

Rich Gerentine, on the other hand, sees the community preservation law as a new way of taking Ulster County down a slippery slope of unwelcome governmental involvement. “This is just the beginning,” he warned.