*** § 64-i. Town of Fishkill preservation funds.** 1. As used in this section, the following words and terms shall have the following meanings:

(a) "Town" means the town of Fishkill.

(b) "Community preservation" shall mean and include any of the purposes outlined in subdivision five of this section.

(c) "Board" means the advisory board required pursuant to subdivision six of this section.

(d) "Fund" means the community preservation fund created pursuant to subdivision two of this section.

(e) "Tax" shall mean the real estate transfer tax imposed pursuant to section fourteen hundred thirty-nine-b of the tax law or, if the context clearly indicates, shall mean the real estate transfer tax imposed pursuant to article thirty-one of the tax law.

2. The town board of the town of Fishkill is authorized to establish by local law a community preservation fund pursuant to the provisions of this section. Deposits into the fund may include revenues of the local government from whatever source and shall include, at a minimum, all revenues from a tax imposed upon the transfer of real property interests in such town pursuant to article thirty-one-A-two of the tax law. The fund shall also be authorized to accept gifts of any such interests in land or of funds. Interest accrued by monies deposited into the fund shall be credited to the fund. In no event shall monies deposited in the fund be transferred to any other account. Nothing contained in this section shall be construed to prevent the financing in whole or in part, pursuant to the local finance law, of any acquisition authorized pursuant to this section. 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 section.

3. The purposes of the fund shall be exclusively: (a) to implement a plan for the preservation of community character as required by this section, (b) to acquire interests or rights in real property for the preservation of community character within the town including villages therein in accordance with such plan and in cooperation with willing sellers, (c) to establish a bank pursuant to a transfer of development

rights program consistent with section two hundred sixty-one-a of this chapter, and (d) to provide a management and stewardship program for such interests and rights consistent with subdivision ten of this section and in accordance with such plan designed to preserve community character. Not more than ten percent of the fund shall be utilized for the management and stewardship program.

4. If the implementation of the community preservation project plan, adopted by the town board, as provided in subdivision seven of this section, has been completed, and funds are no longer needed for the purposes outlined in this subdivision, then any remaining monies in the fund shall be applied to reduce any bonded indebtedness or obligations incurred to effectuate the purposes of this section.

5. Preservation of community character shall involve one or more of the following:

(a) preservation of open space;

(b) establishment of parks, nature preserves, or recreation areas;

(c) preservation of land which is predominantly viable agricultural land, as defined in subdivision seven of section three hundred one of the agriculture and markets law, or unique and irreplaceable agricultural land, as defined in subdivision six of section three hundred one of the agriculture and markets law;

(d) preservation of lands of exceptional scenic value;

(e) preservation of freshwater marshes or other wetlands;

(f) preservation of aquifer recharge areas;

(g) preservation of undeveloped beach-lands or shoreline;

(h) establishment of wildlife refuges for the purpose of maintaining native animal species diversity, including the protection of habitat essential to the recovery of rare, threatened or endangered species;

(i) preservation of unique or threatened ecological areas;

(j) preservation of rivers and river areas in a natural, free-flowing condition;

(k) preservation of forested land;

(l) preservation of public access to lands for public use including stream rights and waterways;

(m) preservation of historic places and properties listed on the New

York state register of historic places and/or protected under a municipal historic preservation ordinance or law; and

(n) undertaking any of the purposes of this subdivision in furtherance of the establishment of a greenbelt.

6. The town board which has established a community preservation fund shall create an advisory board to review and make recommendations on proposed acquisitions of interests in real property using monies from the fund. Such board shall consist of five or seven legal residents of the municipality who shall serve without compensation. No member of the local legislative body shall serve on the board. A majority of the members of the board shall have demonstrated experience with conservation or land preservation activities. The board shall act in an advisory capacity to the town board. At least one member of the board shall be an active farmer. Board members' terms shall be staggered.

7. The town board which has established a community preservation fund shall, by local law, adopt a community preservation project plan. Such plan shall list every project which the town plans to undertake pursuant to the community preservation fund. It shall include every parcel which is necessary to be acquired in the town in order to protect community character. Such plan shall provide for a detailed evaluation of all available land use alternatives to protect community character, including but not limited to: (a) fee simple acquisition, (b) zoning regulations, including density reductions, cluster development, and site plan and design requirements, (c) transfer of development rights, (d) the purchase of development rights, and (e) scenic and conservation easements. Said evaluation shall be as specific as practicable as to each parcel selected for inclusion in such plan. Such plan shall establish the priorities for preservation, and shall include the preservation of farmland as its highest priority. Funds from the community preservation fund may only be expended for projects which have been included in such plan. Such plan shall be updated not less than once every five years, but in no event until at least three years after the adoption of the original plan. A copy of such plan shall be filed with the town clerk, the commissioner of environmental conservation, the commissioner of agriculture and markets and the commissioner of the

office of parks, recreation and historic preservation. Such plan shall be completed at least sixty days before the submission of the mandatory referendum required by section fourteen hundred thirty-nine-b of the tax law. If at the time of referendum, the town shall have in place an adopted open space plan, such plan shall be deemed sufficient to waive the preservation plan requirements of this subdivision. Any monies expended from the community preservation plan shall, however be consistent with the purposes outlined in subdivisions three and five of this section and with the open space plan for a period not to exceed twelve months.

8. The town board which has established a community preservation fund pursuant to this section may study and consider establishing a transfer of development rights program to protect community character as provided for by section two hundred sixty-one-a of this chapter. All provisions of such section two hundred sixty-one-a shall be complied with. If at any time during the life of the community preservation fund a transfer of development rights program is established, the town may utilize monies from the community preservation fund in order to create and fund a central bank of the transfer of development rights program. If at any time during the life of the community preservation fund, a transfer of development rights program is repealed by the town, all monies from the central bank shall be returned to the community preservation fund.

9. No interests or rights in real property shall be acquired pursuant to this section until a public hearing is held as required by section two hundred forty-seven of the general municipal law; provided, however, that nothing herein shall prevent the town board from entering into a conditional purchase agreement before a public hearing is held. Any resolution of the town board approving an acquisition of rights or interest in real property pursuant to this section, shall find that acquisition was the best alternative for the protection of community character of all the reasonable alternatives available to the town.

10. Rights or interest in real property acquired pursuant to this section shall be administered and managed in a manner which (a) allows public use and enjoyment in a manner compatible with the natural,

scenic, historic and open space character of such lands; (b) preserves the native biological diversity of such lands; (c) with regard to open spaces, limits improvements to enhancing access for passive use of such lands such as nature trails, boardwalks, bicycle paths, and peripheral parking areas provided that such improvements do not degrade the ecological value of the land or threaten essential wildlife habitat; and (d) preserves cultural property consistent with accepted standards for historic preservation. Notwithstanding any other provision of this subdivision there shall be no right to public use and enjoyment of land used in conjunction with a farm operation as defined by subdivision eleven of section three hundred one of the agriculture and markets law. In furthering the purposes of this section, the town may enter into agreements with corporations organized under the not-for-profit corporation law and engage in land trust activities to manage lands including less than fee interests acquired pursuant to the provisions of this section, provided that any such agreement shall contain a provision that such corporation shall keep the lands accessible to the public unless such corporation shall demonstrate to the satisfaction of the town that public accessibility would be detrimental to the lands or any natural resources associated therewith.

11. Rights or interests in real property acquired with monies from such fund shall not be sold, leased, exchanged, donated, or otherwise disposed of or used for other than the purposes permitted by this section without the express authority of an act of the state legislature, which shall provide for the substitution of other lands of equal environmental value and fair market value and reasonably equivalent usefulness and location to those to be discontinued, sold or disposed of, and such other requirements as shall be approved by the state legislature. Any conservation easements, created under title three of article forty-nine of the environmental conservation law, which are acquired with monies from such fund may only be modified or extinguished as provided in section 49-0307 of such law. Nothing in this section shall preclude the town, by local law, from establishing additional restrictions to the alienation of lands acquired pursuant to this section. This subdivision shall not apply to the sale of development rights by the town acquired pursuant to this section, where said sale is

made by a central bank created by the town, pursuant to a transfer of development rights program established by the town pursuant to section two hundred sixty-one-a of this chapter, provided, however (a) that the lands from which said development rights were acquired shall remain preserved in perpetuity by a permanent conservation easement or other instrument that similarly preserves the community character referenced in subdivision five of this section, and (b) the proceeds from such sale shall be deposited in the community preservation fund.

* NB There are 2 § 64-i's