

:RESOLUTION: 0910
:CATEGORY: LOCAL LAWS
:SPONSORED BY: PAH
:TITLE: NOTICE OF ADOPTION TO ADD A NEW ARTICLE II TO CHAPTER 140 (COMMUNITY PRESERVATION FUND)

The following resolution was introduced by Councilman Heaney, seconded by Councilman Drew, and duly adopted with the following recorded vote: All in favor:

The Town Clerk is hereby authorized to publish the following Notice of Adoption:

NOTICE OF ADOPTION

TAKE NOTICE that after a public hearing was held by the Town Board of the Town of Southampton on August 11, 1998, the Town Board at their meeting of August 25, 1998 hereby adopted a local law as follows: "A LOCAL LAW amending the Code of the Town of Southampton by adding a new Article II to Chapter 140 (Community Preservation Fund) imposing a 2% real estate transfer tax on the conveyance of interests in real property in the town, with the revenues therefrom to be deposited in the Town of Southampton Community Preservation Fund for the purpose of preserving agricultural lands, open space, significant natural areas, and historic places within the town."

Copies of the local law, sponsored by Supervisor Vincent Cannuscio, Councilmen Patrick "Skip" Heaney, Steven Halsey, James Drew and Councilwoman Martha Rogers, are on file in the Town Clerk's Office, Monday through Friday, from 8:30 a.m. to 4:00 p.m. This Local Law shall take effect upon filing with the Secretary of State, and after approval at the general election to be held on November 3, 1998 by the affirmative vote of the qualified electors of the Town of Southampton.

BY ORDER OF THE TOWN BOARD

TOWN OF SOUTHAMPTON, NEW YORK
MARIETTA M. SEAMAN, TOWN CLERK

LOCAL LAW NO. of 1998

A LOCAL LAW amending the Code of the Town of Southampton by adding a new Article II to Chapter 140 (Community Preservation Fund) imposing a 2% real estate transfer tax on the conveyance of interests in real property in the town, with the revenues therefrom to be deposited in the Town of Southampton Community Preservation Fund for the purpose of preserving agricultural lands, open space, significant natural areas, and historic places within the town.

BE IT ENACTED by the Town Board of the Town of Southampton as follows:

SECTION I. - LEGISLATIVE FINDINGS

The Town of Southampton enjoys a worldwide reputation as a community of great scenic beauty, rich in natural resources such as open space, agricultural lands, woodlands, wetlands, waterways, dunes, bluffs and other natural features. The Town also possesses a rich historic heritage as one of the oldest colonial settlements in the State of New York. Finally, the Town, with the second home industry and tourism being an important segment of its economy, requires parks and recreational areas.

These resources collectively provide the people of the Town of Southampton with a unique and special community character that is unequaled. In fact, the Nature Conservancy has included the region as one of its twelve last great places.

The Town has done much to foster, protect and promote its community character. The Town enjoys a reputation as being creative and innovative in the area of land use and land conservation.

The Town of Southampton was one of the first towns in New York State to implement mandatory cluster zoning or open space zoning, in order to protect valuable natural resources and natural features. Further, the Town was also a leader in utilizing the purchase of development rights to protect farmland. Finally, last year, the Town was among the pioneers of the concept of installment purchase contracts as a new tool to acquire open space and farmland.

Most importantly, since 1980, the Town of Southampton has expended over \$14 million in voter approved bond issues to purchase open space and farmland. This represents an investment of over \$300 per each of the 46,582 town residents as determined by the 1990 U.S. Census. Such a financial commitment to the protection of community character is unmatched in the State of New York. Further, it more than complies with the \$200 per town resident threshold necessary to permit the adoption of this local law.

Yet, the Town is today under extreme development pressure, with development outpacing current conservation efforts. If no action is taken, the community character of the Town of Southampton will be threatened and the substantial investment of the Town in protection of community character will be jeopardized. New financial resources are imperative if the Town is to complete its open space component of its Comprehensive Plan and preserve its community character.

Pursuant to a Chapter 114 of the Laws of 1998 of the State of New York, the Town of Southampton is authorized to create a Community Preservation Fund, and impose a 2% real estate transfer tax, with the revenue derived from said tax to be dedicated to said community

preservation fund. The creation of the fund and the imposition of the tax are subject to mandatory referendum.

It is the purpose of this local law to establish and create the Community Preservation Fund and impose the real estate transfer tax in order to place the revenue derived from the tax in said dedicated fund.

The Town finds that this local law is perhaps the only way the town can complete its open space preservation plan and achieve the needed balance between development and conservation to insure the Town's community character.

SECTION II. The Code of the Town of Southampton is hereby amended by adding a new Article II to Chapter 140 to read as follows:

ARTICLE II
Real Estate Transfer Tax

Section 140-8 Definitions.

A. As used in this chapter, the following words and terms shall have the meanings indicated:

1. PERSON - shall mean an individual, partnership, society, association, joint stock company, corporation, estate, receiver, trustee, assignee, referee, or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, any combination of individuals, and any other form of unincorporated enterprise owned or conducted by two (2) or more persons.
2. CONTROLLING INTEREST - shall mean (a) in the case of a corporation, either fifty percent (50%) or more of the total combined voting power of all classes of stock of such corporation, or fifty percent (50%) or more of the capital, profits, or beneficial interest in such voting stock of such corporation, and (b) in the case of a partnership, association, trust, or other entity, fifty percent (50%) or more of the capital, profits, or beneficial interest in such partnership, association, trust or other entity.
3. REAL PROPERTY - shall mean every estate or right, legal or equitable, present or future, vested or contingent, in lands, tenements or hereditaments, including buildings, structures and other improvements thereon, which are located in whole or in part within the Town. It shall not include rights to sepulture.
4. CONSIDERATION - shall mean the price actually paid or required to be paid for the real property or interest therein, including payment for an option or contract to purchase real property, whether or not expressed in the deed and whether paid or required to be paid by

money, property, or any other thing of value. It shall include the cancellation or discharge of an indebtedness or obligation. It shall also include the amount of any mortgage, purchase money mortgage, lien or other encumbrance, whether or not the underlying indebtedness is assumed or taken subject to:

(a) In the case of the creation of a leasehold interest or the granting of an option with use and occupancy of real property, consideration shall include, but not be limited to, the value of the rental and other payments attributable to the use and occupancy of the real property or interest therein, the value of any amount paid for an option to purchase or renew, and the value of rental or other payments attributable to the exercise of any option to renew.

(b) In the case of the creation of a subleasehold interest, consideration shall include, but not be limited to, the value of the sublease rental payments attributable to the use and occupancy of the real property, the value of any amount paid for an option to renew, and the value of rental or other payments attributable to the exercise of any option to renew, less the value of the remaining prime lease rental payments required to be made.

(c) In the case of a controlling interest in any entity that owns real property, consideration shall mean the fair market value of the real property or interest therein, apportioned based on the percentage of the ownership interest transferred or acquired in the entity.

(d) In the case of an assignment or surrender of a leasehold interest or the assignment or surrender of an option or contract to purchase real property, consideration shall not include the value of the remaining rental payments required to be made pursuant to the terms of such lease or the amount to be paid for the real property pursuant to the terms of the option or contract being assigned or surrendered.

(e) In the case of (i) the original conveyance of shares of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the cooperative corporation or cooperative plan sponsor and (ii) the subsequent conveyance by the owner thereof of such stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold for a cooperative unit other than an individual residential unit, consideration shall include a proportionate share of the unpaid principal of any mortgage on the real property of the cooperative housing corporation comprising the cooperative dwelling or dwellings. Such share shall be determined by multiplying the total unpaid principal of the mortgage by a fraction, the numerator of which shall be the number of shares of stock being conveyed in the cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold and the denominator of which shall be the total number of shares of stock in the cooperative housing corporation.

5. CONVEYANCE - shall mean the transfer or transfers of any interest in real property by any method including but not limited to sale, exchange, assignment, surrender, mortgage foreclosure, transfer in lieu of foreclosure, option, trust indenture, taking by eminent domain, conveyance upon liquidation or by a receiver, or transfer or acquisition of a controlling interest

in any equity with an interest in real property. Transfer of an interest in real property shall include the creation of a leasehold or sublease only where (a) the sum of the term of the lease or sublease and any options for renewal exceeds forty-nine (49) years, (b) substantial capital improvements are or may be made by or for the benefit of the lessee or sublessee, and (c) the lease or sublease is for substantially all of the premises constituting the real property. Notwithstanding the foregoing, conveyance of real property shall not include the creation, modification, extension, spreading, severance, consolidation, assignment, transfer, release or satisfaction of a mortgage; a mortgage subordination agreement, a mortgage severance agreement, an instrument given to perfect or correct a recorded mortgage; or a release of lien of tax pursuant to this chapter or the Internal Revenue Code.

6. INTEREST IN THE REAL PROPERTY - shall include title in fee, a leasehold interest, a beneficial interest, an encumbrance, development rights, air space and air rights, or any other interest with the right to use or occupancy of real property or the right to receive rents, profits or other income derived from real property. It shall also include an option or contract to purchase real property. It shall not include a right of first refusal to purchase real property.

7. GRANTOR - shall mean the person making the conveyance of real property or interest therein. Where the conveyance consists of a transfer or an acquisition of a controlling interest in an entity with an interest in real property, "grantor" shall mean the entity with an interest in real property or a shareholder or partner transferring stock or partnership interest.

8. GRANTEE - shall mean the person who obtains real property or an interest therein as a result of a conveyance.

9. FUND - shall mean the Community Preservation Fund created pursuant to section 64-e of the Town Law and implemented by Article I of this Chapter.

10. RECORDING OFFICER - shall mean the County Clerk of the County of Suffolk.

11. TOWN - shall mean the Town of Southampton.

12. TOWN SUPERVISOR - shall mean the Town Supervisor of the Town of Southampton.

13. TREASURER - shall mean the treasurer of the County of Suffolk.

Section 140-9 Imposition of real estate transfer tax.

There is hereby imposed in the Town of Southampton a tax on each conveyance of real property or interest therein where the consideration exceeds five hundred dollars at a rate of two percent (2%) of the consideration of the conveyance. Revenues from such tax shall be deposited in the Community Preservation Fund established by Article I of this chapter and may be used solely for the purposes of said fund. Such tax shall apply to any conveyance occurring

on or after April 1, 1999, but shall not apply to conveyances made on or after such date pursuant to binding written contracts entered into prior to such date, provided that the date of execution of such contract is confirmed by independent evidence such as the recording of the contract, payment of a deposit, or other facts and circumstances as determined by the County Treasurer.

Section 140-10 Payment of Tax.

A. The real estate transfer tax imposed pursuant to this article shall be paid to the Treasurer, or to the Recording Officer acting as the agent of the Treasurer upon designation as such agent by the Treasurer. Such tax shall be paid at the same time as the real estate transfer tax imposed by Article 31 of the New York Tax Law is required to be paid. Such Treasurer or Recording Officer shall endorse upon each deed or instrument effecting a conveyance a receipt for the amount of the tax so paid.

B. A return shall be required to be filed with such treasurer or recording officer for the purposes of the real estate transfer tax imposed, pursuant to this article, at the same time as the return is required to be filed for purposes of the real estate transfer tax imposed by Article 31 of the tax law of the state of New York. The treasurer shall prescribe the form of return, the information that it shall contain, and the documentation that shall accompany the return. Said form shall be identical to the real estate transfer tax return required to be filed pursuant to section fourteen hundred nine of the state tax law, except that the treasurer shall adapt said form to reflect the provisions of this article that are inconsistent, different, or in addition to the provisions of Article 31 of the state tax law. The real estate transfer tax returns required to be filed pursuant to this section are required to be preserved for three (3) years and thereafter until such treasurer or recording officer orders them to be destroyed.

C. The Recording Officer shall not record an instrument effecting a conveyance unless the return required by this section has been filed and the tax imposed pursuant to this article shall have been paid as provided in this section.

Section 140-11 Liability for tax.

A. The real estate transfer tax required hereunder shall be paid by the grantee. If the grantee has failed to pay the tax imposed pursuant to this article, or if the grantee is exempt from such tax, the grantor shall have the duty to pay the tax. Where the grantor has the duty to pay the tax because the grantee has failed to pay, such tax shall be the joint and several liability of the grantee and grantor.

B. For the purpose of the proper administration of this article and to prevent evasion of the tax hereby authorized, it shall be presumed that all conveyances are taxable. Where the consideration includes property other than money, it shall be presumed that the consideration

is the fair market value of the real property or interest therein. These presumptions shall prevail until the contrary is proven, and the burden of proving the contrary shall be on the person liable for payment of the tax.

Section 140-12 Exemptions from tax.

A. Exemption for government agencies. The following entities shall be exempt from payment of the real estate transfer tax imposed by this article:

(1) The State of New York or any of its agencies, instrumentalities, political subdivisions, or public corporations (including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada);

(2) The United Nations; and

(3) The United States of America and any of its agencies or instrumentalities.

B. Exemption for certain conveyances. The real estate transfer tax imposed by this article shall not apply to any of the following conveyances:

(1) Conveyances to the United Nations, the United States of America, the State of New York or any of their instrumentalities, agencies, or political subdivisions (or any public corporation, including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada).

(2) Conveyances which are or were used to secure a debt or other obligation.

(3) Conveyances which, without additional consideration, confirm, correct, modify, or supplement a prior conveyance.

(4) Conveyances of real property without consideration and otherwise than in connection with a sale, including conveyances conveying realty as bona fide gifts.

(5) Conveyances given in connection with a tax sale.

(6) Conveyances to effectuate a mere change of identity or form of ownership or organization where there is no change in beneficial ownership, other than conveyances to a cooperative housing corporation of the real property comprising the cooperative dwelling or dwellings.

(7) Conveyances which consist of a deed of partition.

(8) Conveyances given pursuant to the Federal Bankruptcy Act.

(9) Conveyances of real property which consist of the execution of a contract to sell real property without the use or occupancy of such property or the granting of an option to purchase real property without the use or occupancy of such property.

(10) Conveyances of real property, where the entire parcel of real property to be conveyed is the subject of one or more of the following development restrictions:

- (a) agricultural, conservation, scenic, or an open space easement,
- (b) covenants or restrictions prohibiting development,
- (c) a purchase of development rights agreement,
- (d) a transfer of development rights agreement, where the property being conveyed has had its development rights removed,
- (e) said real property is subject to the development restriction of an agricultural district or individual commitment, pursuant to article twenty-five-aa of the state agriculture and markets law, or
- (f) a locally adopted land preservation agreement, adopted pursuant to chapter XXX of the Town Code.

(11) Conveyances of real property, where the property is viable agricultural land as defined in subdivision seven of section three hundred one of the state agriculture and markets law and the entire property to be conveyed is to be made subject to one of the development restrictions provided for in paragraph (10) of this section, provided that the development restriction precludes the conversion of the property to a non-agricultural use for at least three years from the date of transfer, and said development restriction is evidenced by an easement, agreement, or other suitable instrument which is to be conveyed to the town simultaneously with the conveyance of the real property.

(12) Conveyances of real property for open space, parks, or historic preservation purposes to any not-for-profit tax exempt corporation operated for conservation, environmental or historic preservation purposes.

Section 140-13. Additional exemptions.

A. There shall be allowed an exemption of two hundred fifty thousand dollars (\$250,000) on the consideration of the conveyance of all improved real property or an interest therein.

B. There shall be allowed an exemption of one hundred thousand dollars (\$100,000) on the consideration of the conveyances of all unimproved real property or an interest therein.

Section 140-14 Credit.

A grantee shall be allowed a credit against the tax due on a conveyance of real property to the extent the tax was paid by such grantee on a prior creation of a leasehold of all or a portion of the same real property or a portion of the same real property by such grantee. Such credit shall be computed by multiplying the tax paid on the creation of the leasehold or on the granting of the option or contract by a fraction, the numerator of which is the value of the consideration used to compute such tax paid which is not yet due to such grantor on the date of the subsequent conveyance (and which such grantor will not be entitled to receive after such date) and the denominator of which is the total value of the consideration used to compute such tax paid.

Section 140-15. Cooperative housing corporation transfers.

A. Notwithstanding the definition of "controlling interest" contained in Section 140-8 hereof or anything to the contrary found in the definition of "conveyance" contained in said section, the tax imposed pursuant to this article shall apply to the following:

(1) The original conveyance of shares of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the cooperative corporation or cooperative plan sponsor.

(2) The subsequent conveyance of such stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the owner thereof. With respect to any such subsequent conveyance where the property is an individual residential unit, the consideration for the interest conveyed shall exclude the value of any liens on certificates of stock or other evidences of an ownership interest in and a proprietary lease from a corporation or partnership formed for the purpose of cooperative ownership of residential interest in real estate remaining thereon at the time of conveyance. In determining the tax on a conveyance described in paragraph A (1) above, a credit shall be allowed for a proportionate part of the amount of any tax paid upon the conveyance to the cooperative housing corporation of the real property comprising the cooperative dwelling or dwellings to the extent that such conveyance effectuated a mere change of identity or form of ownership of such property and not a change in the beneficial ownership of such property. The amount of credit shall be determined by multiplying the amount of tax paid upon the conveyance to the cooperative housing corporation by a percentage representing the extent to which such conveyance effectuated a mere change of identity or form of ownership and not a change in the beneficial ownership of such property, and then multiplying the resulting product by a fraction, the numerator of which shall be the number of shares of stock conveyed in a

transaction described in paragraph A (1) and the denominator of which shall be the total number of shares of stock of the cooperative housing corporation (including any stock held by the corporation.) In no event, however, shall such credit reduce the tax on a conveyance described in paragraph A (1) below zero, nor shall any such credit be allowed for a tax paid more than twenty-four (24) months prior to the date on which occurs the first in a series of conveyances of shares of stock in an offering of cooperative housing corporation shares described in paragraph A (1).

B. Every cooperative housing corporation shall be required to file an information return with the County Treasurer by July 15th of each year covering the preceding period of January 1 through June 30 and by January 15th of each year covering the preceding period of July 1 through December 31. The return shall contain such information regarding the conveyance of shares of stock in the cooperative housing corporation as the Treasurer may deem necessary, including, but not limited to, the names, addresses, and employee identification numbers or social security numbers of the grantor and the grantee, the number of shares conveyed, the date of the conveyance, and the consideration paid for such conveyance.

Section 140-16. Designation of agent by County Treasurer.

The County Treasurer is authorized by law to designate the Recording Officer to act as his agent for the purpose of collecting the tax authorized by this article. The Treasurer shall provide for the manner in which such person may be designated as his agent subject to such terms and conditions as he shall prescribe. The real estate transfer tax shall be paid to such agent as provided in Section XXX-10 hereof.

Section 140-17. Liability of Recording Officer.

A Recording Officer shall not be liable for any inaccuracy in the amount of tax imposed pursuant to this article that he shall collect so long as he shall compute and collect such tax on the amount of consideration or the value of the interest conveyed as such amounts are provided to him by the person paying the tax.

Section 140-18 Refunds.

Whenever the Treasurer shall determine that any moneys received under the provisions of this article were paid in error he may cause such money to be refunded pursuant to such rules and regulations as he may prescribe, provided that any application for such refund is filed with the Treasurer within two (2) years from the date the erroneous payment was made.

Section 140-19. Deposit and disposition of revenue.

A. All taxes, penalties, and interest imposed by the Town under the authority of this article, which are collected by the Treasurer or his agents, shall be deposited in a single trust fund for the Town and shall be kept in trust and separate and apart from all other monies in possession of the Treasurer. Moneys in such fund shall be deposited and secured in the manner provided by Section 10 of the General Municipal Law. Pending expenditure from such fund, moneys therein may be invested in the manner provided in Section 11 of the General Municipal Law. Any interest earned or capital gain realized on the moneys so deposited or invested shall accrue to and become part of such fund.

B. The Treasurer shall retain such amount as he may determine to be necessary for refunds with respect to the tax imposed by the Town under the authority of this article, out of which the Treasurer shall pay any refunds of such taxes to those taxpayers entitled to a refund pursuant to the provisions of this article.

C. The Treasurer, after reserving such funds, shall on or before the twelfth day of each month, pay to the Town Supervisor the taxes, penalties, and interest imposed by the Town under the authority of this article, collected by the Treasurer pursuant to this article during the proceeding calendar month. The amount so payable shall be certified to the Town Supervisor by the Treasurer, who shall not be held liable for any inaccuracy in such certification. However, any such certification may be based on such information as may be available to the Treasurer at the time such certification must be made under this section.

D. Where the amount so paid over to the Town in any such distribution is more or less than the amount due to the Town, the amount of the overpayment or underpayment shall be certified to the Town Supervisor by the Treasurer, who shall not be held liable for any inaccuracy in such certification. The amount of the underpayment or overpayment shall be so certified to the Town Supervisor as soon after the discovery of the overpayment or underpayment as reasonably possible and subsequent payments and distributions by the Treasurer to such Town shall be adjusted by subtracting the amount of any such overpayment from or by adding the amount of any such underpayment to such number of subsequent payments and distributions as the Treasurer and Town Supervisor shall consider reasonable in view of the underpayment or overpayment and all other facts and circumstances.

E. All monies received from the Treasurer by the Town Supervisor shall be deposited in the Community Preservation Fund established by Article I of this chapter.

Section 140-20 Judicial Review.

A. Any final determination of the amount of any tax payable under this article shall be reviewable for error, illegality, or unconstitutionality, or any other reason whatsoever, by a proceeding under Article 78 of the Civil Practice Law and Rules if application therefor is made to the Supreme Court within four (4) months after the giving of the notice of such final

determination; provided, however, that any such proceeding under Article 78 of the Civil Practice Law and Rules shall not be instituted unless:

(1) The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by this chapter, shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in New York State and approved by the State Superintendent of Insurance as to solvency and responsibility, in such amount as a Justice of the Supreme Court shall approve, to the effect that, if such proceeding shall be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

(2) At the option of the petitioner, such undertaking may be in a sum sufficient to cover the taxes, interest, and penalties stated in such determination, plus the costs and charges which may accrue against him in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest, or penalties as a condition precedent to the application.

B. Where any tax imposed hereunder shall have been erroneously, illegally, or unconstitutionally assessed or collected, and application for the refund or revision thereof duly made to the Treasurer, and such Treasurer shall have made a determination denying such refund or revision, such determination shall be reviewable by a proceeding under Article 78 of the Civil Practice Law and Rules; provided, however, that:

(1) Such proceeding is instituted within four (4) months after the giving of the notice of such denial;

(2) A final determination of tax due was not previously made; and

(3) An undertaking is filed with the Treasurer in such amount and with such sureties as a Justice of the Supreme Court shall approve, to the effect that if such proceeding is dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

Section 140-21. Apportionment of consideration subject to tax for property located only partly within Town.

A. Where real property is situated partly within and partly without the boundaries of the Town, the consideration subject to tax is such part of the total consideration as is attributable to the portion of such real property situated within the Town or to the interest in such portion. If the consideration attributable to the property located in the town is set forth in the contract, such amount may be used to compute the tax due.

B. If the contract does not set forth the amount of consideration attributable to the portion of real property or interest therein situated within the Town, the consideration shall be reasonably allocated between the portion of such property or interest therein situated within the Town and the portion of such property or interest therein situated without the Town. If the grantor and the grantee enter into a written agreement, signed by both the grantor and the grantee, which sets forth a reasonable allocation of consideration, that allocation of consideration may be used to compute the tax due. If the grantor and the grantee do not enter into such an agreement, or if the allocation of consideration set forth in such agreement is deemed unreasonable by the Treasurer, the allocation of consideration must be computed by multiplying the amount of consideration by a fraction, the numerator of which is the fair market value of the real property or interest therein situated within the Town, and the denominator of which is the total fair market value of all the real property or interest therein being conveyed. Except in the case of a transfer or acquisition of a controlling interest where consideration means fair market value of the real property or interest therein, the tax shall be computed on the allocated portion of the actual consideration paid, even if that amount is greater or less than the fair market value as determined by appraisal.

C. Where the methods provided under this section do not allocate the consideration in a fair and equitable manner, the Treasurer may require the grantor and grantee to allocated the consideration under such method as he prescribes, so long as the prescribed method results in a fair and equitable allocation.

Section 140-22. Determination of tax; petition to Town Supervisor.

A. If a return required by this article is not filed, or if a return when filed is incorrect or insufficient, the amount of tax due shall be determined by the Treasurer from such records or information as may be obtainable, including the assessed valuation of the real property or interest therein and other appropriate factors. Notice of such determination shall be given to the person liable for the payment of the tax. Such determination shall finally and irrevocably fix the tax unless the person against whom it is assessed, within ninety (90) days after the giving of notice of such determination, shall petition the Town Supervisor for a hearing, or unless the Treasurer, on the Treasurer's own motion, shall redetermine the same. The Town Supervisor may designate, in writing, a hearing officer to hear such an appeal, which hearing officer shall file a written report and recommendation with the Town Supervisor. In any case before the Town Supervisor under this article, the burden of proof shall be on the petitioner. After such hearing, the Town Supervisor shall give notice of the determination to the person against whom the tax is assessed and to the Treasurer. Such determination may be reviewed in accordance with the provisions of Section 140-20 of this article. A proceeding for judicial review shall not be instituted unless:

(1) The amount of any tax sought to be reviewed, with penalties and interest thereon, if any, shall be first deposited with the Treasurer and there shall be filed with the Treasurer an undertaking, issued by a surety company authorized to transact business in New York State and

approved by the State Superintendent of Insurance as to solvency and responsibility, in such amount and with such sureties as a Justice of the Supreme Court shall approve, to the effect that if such proceeding shall be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of the proceeding; or

(2) At the option of the petitioner, such undertaking filed with the Treasurer may be in a sum sufficient to cover the taxes, penalties, and interest thereon stated in such decision, plus the costs and charges which may accrue against him in the prosecution of the proceeding; in which event, the petitioner shall not be required to deposit such taxes, precedent to the commencement of the proceeding.

B. A person liable for the tax imposed by this article (whether or not a determination assessing a tax pursuant to subsection A hereof has been made) shall be entitled to have the tax due finally and irrevocably fixed prior to the ninety (90) day period referred to in subsection A by filing with the Treasurer a signed statement consenting thereto, in writing and in such form as the Treasurer shall prescribe.

C. The remedies provided by this section and Section XXX-20 of this article shall be the exclusive remedies available to any person for the review of tax liability imposed by this article.

Section 140-23. Proceedings to recover tax due.

A. Whenever any person shall fail to pay any tax, penalty, or interest imposed by this article, the Town Attorney shall, upon the request of the Treasurer, bring or cause to be brought, an action to enforce the payment of the same on behalf of the Town, in any court of the State of New York or of any other state or of the United States.

B. As an additional and alternative remedy, the Treasurer may issue a warrant, directed to the Sheriff of Suffolk County, commanding him to levy upon and sell any real and personal property of a grantor or grantee liable for the tax which may be found within the county, for payment of the amount thereof, with any penalty and interest and the cost of executing the warrant, and to return such warrant to the Treasurer and to pay the Treasurer the money collected by virtue thereof within sixty (60) days after the receipt of the warrant. The Sheriff shall, within five (5) days after the receipt of the warrant, file with the Clerk a copy thereof, and thereupon such Clerk shall enter in the judgment docket the name of the person mentioned in the warrant and the amount of the tax, penalty, and interest for which the warrant is issued. Such lien shall not apply to personal property unless such warrant is filed with the Department of State. The Sheriff shall then proceed upon the warrant in the same manner and with like effect as that provided by law in respect to executions issued against property upon judgments of a court of record, and for services in executing the warrant he shall be entitled to the same fees, which he may collect in the same manner. In the discretion of the Treasurer, a warrant of like terms, force, and effect may be issued and directed to any officer or employee of the County; and in the execution thereof, such officer or employee shall have all the powers

conferred by law upon Sheriffs, but shall be entitled to no fee or compensation in excess of the actual expenses paid in the performance of such duty. Upon such filing of a copy of a warrant, the Treasurer shall have the same remedies to enforce the amount due thereunder as if the County of Suffolk had recovered the judgment therefor.

Section 140-24. Interest and civil penalties.

A. Any grantor or grantee failing to file a return or to pay any tax within the time required by this article shall be subject to a penalty of ten per centum (10%) of the amount of the tax due plus an interest penalty of two per centum (2%) of such amount, for each month of delay or fraction thereof after the expiration of the first month after such return was required to be filed or such tax became due; such interest penalty shall not exceed twenty-five per centum (25%) in the aggregate. If the Treasurer determines that such failure or delay was due to reasonable cause and not due to willful neglect, the Treasurer shall remit, abate, or waive all of such penalty and interest penalty.

B. If any amount of tax is not paid on or before the last date prescribed in Section 140-10 hereof for payment, interest on such amount at the rate of ten percent (10%) per month shall be paid for the period from such last date to the date paid.

C. the penalties and interest provided for in this section shall be paid to the Treasurer and shall be determined, assessed, collected, and distributed in the same manner as the tax imposed by this article and any reference to tax in this article shall be deemed to include the penalties and interest imposed in this section.

Section 140-25 Confidentiality of transfer tax returns.

A. Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for any officer or employee of the Town, or any person engaged or retained on an independent contract basis, to divulge or make known in any manner the particulars set forth or disclosed in any return required under this article. However, nothing in this section shall prohibit the Recording Officer from making a notation on an instrument effecting a conveyance indicating the amount of tax paid. No recorded instrument effecting a conveyance shall be considered a return for the purposes of this section.

B. The officers charged with the custody of such returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the Town in any action or proceeding involving the collection of a tax due under this article to which the Town or an officer or employee of the Town is a party or a claimant, or on behalf of any party to any action or proceeding under the provisions of this article when the returns or facts shown thereby are directly involved in such action or proceeding; in any of which events the court may require the production of and may admit in

evidence so much of said returns or of the facts shown thereby as are pertinent to the action or proceeding and no more.

C. Nothing herein shall be construed to prohibit the delivery to a grantor or grantee of an instrument effecting a conveyance, or to the duly authorized representative of such grantor or grantee, of a certified copy of any return filed in connection with such instrument or to prohibit the publication of statistics so classified as to prevent the identification of particular returns or the items thereof or to prohibit the inspection by the legal representatives of the Town of the return of any taxpayer who shall bring action to set aside or review the tax based thereon.

D. Any officer or employee of the Town who wilfully violates the provisions of this section shall be dismissed from office and be incapable of holding any public office in the State for a period of five (5) years thereafter.

SECTION III. 4 INTERGOVERNMENTAL AGREEMENT:

The Town Board shall be authorized to, by resolution, enter into any intergovernmental agreement necessary with the County of Suffolk or any successor county, for the effective and efficient administration and enforcement of this local law.

SECTION IV. - FORM OF PROPOSITION:

Pursuant to Section 1449-bb of the New York Tax Law and Section 23 of the Municipal Home Rule Law, this Local Law is subject to mandatory referendum. Therefore, the following proposition shall be submitted to the electors of the Town of Southampton at the general election to be held on November 3, 1998:

"SHALL A LOCAL LAW ADOPTED IN 1998, ENTITLED 'A LOCAL LAW AMENDING THE CODE OF THE TOWN OF SOUTHAMPTON BY ADDING A NEW ARTICLE II TO CHAPTER 140 (COMMUNITY PRESERVATION FUND) IMPOSING A 2% REAL ESTATE TRANSFER TAX ON THE CONVEYANCE OF INTERESTS IN REAL PROPERTY IN THE TOWN, WITH REVENUES THEREFROM TO BE DEPOSITED IN THE TOWN OF SOUTHAMPTON COMMUNITY PRESERVATION FUND FOR THE PURPOSE OF PRESERVING AGRICULTURAL LANDS, OPEN SPACE, SIGNIFICANT NATURAL AREAS, AND HISTORIC PLACES WITHIN THE TOWN,' BE APPROVED?"

SECTION V. - SEVERABILITY:

If any clause, sentence, paragraph, section or part of this Local Law shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence,

paragraph, section, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

SECTION VI. - EFFECTIVE DATE:

This Local Law shall take effect upon filing with the Secretary of State, and after approval at the general election to be held on November 3, 1998 by the affirmative vote of the qualified electors of the Town of Southampton upon the proposition set forth in Section IV hereof, except that the real estate transfer tax imposed by Article II of this Local Law shall not take effect until April 1, 1999 as set forth in the Local Law, and provided further that said real estate transfer tax imposed by Article II of the Local Law shall expire and be deemed repealed after December 31, 2010.