

DEPARTMENT OF LAW

January 3, 2012

R+F

Via Hand Delivery

Hon. Robert M. Graber
Erie County Legislature
92 Franklin Street, 4th Floor
Buffalo, New York 14202

Re: Local Law No. 2-2011 - A Local Law in relation to conservation easement agreement exemptions in the Town of Elma

Dear Mr. Graber:

Enclosed please find an original of the above-referenced Local Law for filing in your office.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: 

Gregory P. Kammer
Assistant County Attorney

GPK/dkw
Enclosure

2D-1

Local Law Filing

(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

County City Town Village
(Select one.)

of Erie

Local Law No. 2 of the year 2011

A local law in relation to conservation easement agreement exemptions in the Town of Elma.
(Insert Title)

Be it enacted by the Legislature of the
(Name of Legislative Body)

County City Town Village
(Select one.)

of Erie as follows:

SECTION 1. LEGISLATIVE INTENT. The Town of Elma is authorized to adopt a Local Law to create and implement conservation easement agreement exemptions, pursuant to Real Property Tax Law §491, in an effort to promote open space in the town. Because the exemption results in a respread of property tax, it has no fiscal impact to the revenue of the County of Erie. Concurrent adoption of a resolution clarifying an "add back" will be necessary to fully implement the legislative intent of this Local Law.

SECTION 2. DEFINITIONS. For the purpose of this section, the following terms shall have the following meanings: "open space" or "open area" means any space or area characterized by natural scenic beauty or whose existing openness, natural condition or present state of use, if retained, would enhance the present or potential value of abutting or surrounding urban development or would maintain or enhance the conservation of natural or scenic resources. "Natural Resources" shall included, but not be limited to, agricultural lands defined as open lands actually used in bona fide agricultural production.

SECTION 3. PROCEDURES FOR OBTAINING A CONSERVATION EASEMENT AGREEMENT.

(a) Any owner or owners of land may submit a proposal to the town board of the Town of Elma for the granting of interest or rights in real property for the preservation of open space or areas. Such proposal shall be submitted in such a manner and form as may be prescribed by the Conservation Board of the Town of Elma.

(If additional space is needed, attach pages the same size as this sheet, and number each.)

(b) Upon receipt of such proposal, the town board shall convey the proposal to the Conservation Board of the Town of Elma. The Conservation Board shall investigate the area to determine if the proposal would be of benefit to the people of the Town and may negotiate the terms and conditions of the offer. If the Conservation Board determines that it is in the public interest to accept such proposal, it shall recommend to the town board that it hold a public hearing for the purpose of determining whether or not the town should accept such proposal.

(c) The Town Board shall, within thirty days of receipt of such advisory opinion, hold a public hearing concerning such proposal at a place within the Town. At least ten days notice of the time and place of such hearing shall be published in a paper of general circulation in such town, and a written notice of such proposal shall be given to all adjacent property owners and to any municipality whose boundaries are within five hundred feet of the boundaries of said proposed area, and to the school district in which it is located.

(d) The Town Board, after receiving the reports of the Conservation Board of the Town of Elma and after such public hearing, may adopt the proposal or any modification thereof it deems appropriate or may reject it in its entirety.

(e) If such proposal is adopted by the Town Board, it shall be executed by the owner or owners in written form and in a form suitable for recording in the Erie County Clerk's office.

(f) Such agreement may not be canceled by either party. However, the owner or owners thereof may petition the Town Board for cancellation upon good cause shown, and such cancellation may be granted only upon payment of the penalties provided in this law.

SECTION 4. COMPUTATION.

(a) An exemption granted pursuant to this section shall commence as of the effective date of the conservation easement agreement, and shall terminate upon the expiration or termination of such conservation easement agreement.

(b) The following table shall illustrate the computation of the exemption:

Commitment	Percentage of Exemption
15 to 29 years	50%
30 to 49 years	75%
50 to 75 years	85%
Perpetual	90%

Such exemption shall be granted only upon application by the owner or owners of such real property on a form prescribed by the State Board. Such application shall be filed with the assessor of the Town on or before the taxable status date of the Town of Elma.

(c) If satisfied that the applicant is entitled to an exemption pursuant to this section, the assessor shall approve the application and such real property shall thereafter be exempt from taxation and special ad valorem levies as provided in this section commencing with the assessment roll prepared on the basis of the taxable status date. The assessed value of any exemption granted pursuant to this section shall be entered by the assessor on the assessment roll with the taxable property, with the amount of the exemption shown in a separate column.

(d) Whenever a conservation easement encumbers only a portion of a parcel, the assessor shall henceforth enter that portion of a parcel encumbered by such easement as a separate parcel on all subsequent assessment rolls.

SECTION 5. PENALTIES FOR OFFENSES. If there is a violation of the terms and conditions of the conservation easement agreement or if such conservation easement agreement is canceled by the Town Board upon petition, then the owner or owners of such property must pay to the town the following amounts:

(a) All taxes abated pursuant to the conservation easement agreement, as limited by the remainder of this section, including, if applicable, those taxes imposed by the county, town, school districts and all special improvement districts and other taxing units to which the property is subject. Repayment of the aforementioned abated taxes shall be equal to five times the taxes saved in the last year in which the land benefited from a conservation easement agreement exemption, plus interest of six percent per year compounded annually for each year in which an exemption was granted, not exceeding five years.

(b) Payments shall be added by or on behalf of each taxing jurisdiction to the taxes levied on the assessment roll prepared on the basis of the first taxable status date after there is a violation of the terms and conditions of the conservation easement or such conservation easement agreement is canceled.

SECTION 6. EFFECTIVE DATE. This Local Law shall take effect immediately.

SECTION 7. SEVERABILITY. If any clause, sentence, paragraph, subdivision, section or part of this Local law or the application thereof, to any person, individual, corporation, firm, partnership entity or circumstance, shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order of judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section, or part of this Local Law or in its application to the person, individual, corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such judgment or order shall be rendered.

**SPONSERED BY
LEGISLATOR DINO J. FUDOLI**

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

1. (Final adoption by local legislative body only.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the (County)(City)(Town)(Village) of Erie was duly passed by the Erie County Legislature on December 20____, in accordance with the applicable provisions of law.
(Name of Legislative Body)

2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer*.)

I hereby certify that the local law annexed hereto, designated as local law No. 2 of 2011 of the (County)(~~City~~)(~~Town~~)(~~Village~~) of Erie was duly passed by the Erie County Legislature on December 1 2011, and was (approved)(~~not approved~~)
(Name of Legislative Body)
~~repassed after disapproval~~ by the Erie County Executive and was deemed duly adopted
(Elective Chief Executive Officer)*
on December 16 2011, in accordance with the applicable provisions of law.

3. (Final adoption by referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20____, and was (approved)(not approved)
(Name of Legislative Body)
(repassed after disapproval) by the _____ on _____ 20____.
(Elective Chief Executive Officer)*

Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on _____ 20____, in accordance with the applicable provisions of law.

4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20____, and was (approved)(not approved)
(Name of Legislative Body)
(repassed after disapproval) by the _____ on _____ 20____. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of _____ 20____, in accordance with the applicable provisions of law.

* Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.

5. (City local law concerning Charter revision proposed by petition.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the City of _____ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on _____ 20____, became operative.

6. (County local law concerning adoption of Charter.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the County of _____ State of New York, having been submitted to the electors at the General Election of November _____ 20____, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph 2 above.

Clerk of the county legislative body, City, Town or Village Clerk or officer designated by local legislative body

Date: 12/29/11

(Seal)

(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized attorney of locality.)

STATE OF NEW YORK
COUNTY OF ERIE

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.

[Signature]
Signature
Assistant County Attorney
Title

County
City of Erie
Town
Village

Date: 12/28/11

A Public Hearing was held on the foregoing Local Law Intro. No. 9-2011 on Thursday, December 15, 2011, due notice thereof having been published in the official newspapers of the County of Erie designated for this purpose, and after due deliberation thereon, I, CHRIS COLLINS, County Executive of Erie County, do hereby APPROVE and SIGN said Local Law this 16th day of December, 2011.



Chris Collins

A Public Hearing was held on the foregoing Local Law Intro. No. 9-2011 on Thursday, December 15, 2011, due notice thereof having been published in the official newspapers of the County of Erie designated for this purpose, and after due deliberation thereon, I, CHRIS COLLINS, County Executive of Erie County, do hereby DISAPPROVE and VETO said Local Law this ____ day of _____, 2011.

Chris Collins