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ZONING AND LAND USE PLANNING

Balancing N.Y.'s Agricultural Law With Local Zoning Rights

By **Anthony S. Guardino**

Article XIV, Section 4, of the New York State Constitution, added in 1970, provides that the policy of the state shall be to encourage the development and improvement of its agricultural lands for the production of food and other agricultural products and states that the Legislature, in implementing this policy, shall include adequate provision for the protection of agricultural lands. In 1971, on the heels of that change to the Constitution, the New York Legislature enacted Article 25-AA of the Agriculture and Markets Law (AML) for the stated purposes of protecting, conserving, and encouraging "the development and improvement of [the state's] agricultural lands."[1]

At that time, the Legislature specifically found that "many of the agricultural lands in New York" were "in jeopardy of being lost for any agricultural purposes" due to local land use regulations inhibiting farming, as well as various other deleterious side effects resulting from the extension of nonagricultural development into farm areas.[2]

The new law gave county legislative bodies the power to create "agricultural districts."[3] Significantly, lands falling within agricultural districts may be entitled to statutory protections and benefits, including with respect to local zoning laws. More specifically, AML §305-a prohibits local governments from enacting and administering comprehensive plans, laws, ordinances, rules, or regulations that unreasonably restrict or regulate farm operations within an agricultural district, unless it can be shown that the public health or safety is threatened.

The law also authorizes the Commissioner of Agriculture and Markets (currently, Richard A. Ball)[4] to bring an action against a municipality whose laws or actions are deemed to unreasonably interfere with farming operations within an agricultural district.

This column explores the relationship between the AML's objective of promoting farming and a local government's right to control land uses through zoning.

The Law

AML §305-a contains the following mandate:

> Local governments, when exercising their powers to enact and administer comprehensive plans and local laws, ordinances, rules or regulations, shall exercise these powers in such manner as may realize the policy and goals set forth in [AML Article 25-AA], and shall not unreasonably restrict or regulate farm operations within agricultural districts in contravention of the purposes of this article unless it can be shown that the public health or safety is threatened.

Only "farm operations" are protected by Section 305-a. The term "farm operation" is defined in AML §301(11) as meaning:

> land and on-farm buildings, equipment, manure processing and handling facilities, and practices which contribute to the production, preparation and marketing of crops, livestock and livestock products as a commercial enterprise.

Then, the phrase "crops, livestock and livestock products" is defined in Section AML §301(2) as including, but as not being limited to, the following:

> a. Field crops, including corn, wheat, oats, rye, barley, hay, potatoes and dry beans.
>
> b. Fruits, including apples, peaches, grapes, cherries and berries.
>
> c. Vegetables, including tomatoes, snap beans, cabbage, carrots, beets and onions.
>
> d. Horticultural specialties, including nursery stock, ornamental shrubs, ornamental trees and flowers.
>
> e. Livestock and livestock products, including cattle, sheep, hogs, goats, horses, poultry, ratites, such as ostriches, emus, rheas and kiwis, farmed deer, farmed buffalo, fur bearing animals, milk, eggs and furs.

ANTHONY S. GUARDINO *is a partner with Farrell Fritz in the firm's Hauppauge office. He can be reached at aguardino@farrellfritz.com.*

f. Maple sap.

g. Christmas trees derived from a managed Christmas tree operation whether dug for transplanting or cut from the stump.

h. Aquaculture products, including fish, fish products, water plants and shellfish.

i. Woody biomass, which means short rotation woody crops raised for bioenergy, and shall not include farm woodland.

j. Apiary products, including honey, beeswax, royal jelly, bee pollen, propolis, package bees, nucs and queens. For the purposes of this paragraph, "nucs" shall mean small honey bee colonies created from larger colonies including the nuc box, which is a smaller version of a beehive, designed to hold up to five frames from an existing colony.

The Department's Review

The New York State Department of Agriculture and Markets (the department) is available to review proposed or existing local laws or ordinances to determine whether, in the department's view, they violate Section 305-a.[5] Indeed, the department encourages municipalities to seek its guidance prior to drafting and adopting laws that may restrict farming operations so that it can provide an informal determination regarding the law's enforceability.

The department performs AML §305-a reviews on a case-by-case basis, taking into account the specific facts of a situation. Department staff initially determine whether the land involved is located within a state certified, county adopted agricultural district and if the land use and activity constitute a "farm operation" as defined by AML §301(11). In determining whether the operation constitutes a farm operation, the department evaluates such factors as the acreage in production; capital investment; gross sales of crops, livestock, and livestock products; the type of enterprise; and the number of years in operation.

If the department determines that AML §305-a applies, it evaluates whether the local law or ordinance is reasonable both "on its face" and as applied to the particular situation. In examining whether a local law is unreasonably restrictive, the department considers several factors, including, but not limited to: whether the requirements adversely affect the farm operator's ability to manage the farm operation effectively and efficiently; whether the requirements restrict production options that could affect the economic viability of the farm; whether the requirements will cause a lengthy delay in the construction of a farm building or implementation of a practice; the cost of compliance for the farm operation affected; and the availability of less onerous means to achieve the locality's objective. The department also takes into account any relevant standards established under state law and regulations.[6]

According to the department, some laws or ordinances are so vague that they inhibit farmers from undertaking certain activities or constructing certain buildings out of concern for violating the law or ordinance; in these cases, it is possible that the law or ordinance, because of its vague construction, could be construed as unreasonably restricting farm structures or farming practices.[7]

The department also has indicated that even though a law or ordinance may appear reasonable in the abstract, it may unreasonably restrict or regulate a particular farmer or landowner. As an example, the department points to zoning ordinances that impose setback requirements for structures in the interest of public safety or even aesthetics. In the department's view, these setbacks "may be entirely reasonable under usual conditions, but may be construed as being unreasonable if applied to a farmer who, for example, constructs a building on a dead-end street, shielded from view, and near the only available water source."[8]

Moreover, according to the department, a reasonable exercise of authority in one locality may translate into an "unduly burdensome restriction" on farming in another. Thus, "reasonableness depends on the totality of circumstances in each case."[9]

What is the the relationship between the Agriculture and Markets Law's objective of promoting farming and a local government's right to control land uses through zoning?

Although local regulations that unreasonably restrict farm operations are likely to be scrutinized under AML Section 305-a, the department may choose not to object to them if it finds that they are necessary to protect the public health and safety. If it makes such a finding, the limitations of Section 305-a do not apply.

If the department decides that a local law or ordinance unreasonably restricts or regulates farm operations in an agricultural district, and that public health or safety is not threatened by the regulated activity, the department will notify the local municipality and attempt to resolve its concerns while addressing the local government's interests. If consensus is not reached, the commissioner may bring an action in New York State Supreme Court to enforce the provisions of Section 305-a or may issue an order to comply pursuant to AML §36.

Court Decisions

Since its enactment in 1971, AML §305-a has been the subject of few court decisions. One significant decision, however, was rendered in 2001 by the New York Court of Appeals. In *Town of Lysander v. Hafner*,[10] the court was faced with deciding whether AML §305-a superseded a zoning ordinance in the upstate town of Lysander as applied to the owners and operators of a commercial farm in an agricultural district in the town.

The case arose when the farmers sought to install several single-wide mobile homes for housing migrant workers on the farm. The mobile homes did not comply with the town zoning ordinance that provided that "all one-story single family dwellings" had to have a minimum living area of 1,100 square feet.

In 1998, the town initially granted the farmers a temporary building permit for two mobile homes, but refused to extend the permit in 1999 and disapproved their permit application to site additional mobile homes on the farm, relying on the town's zoning code. The town then commenced an action for an injunction precluding the farmers from using the mobile homes to house migrant workers and directing removal of the structures unless they obtained the necessary building permits.

The farmers alleged, as an affirmative defense, that the zoning ordinance unreasonably restricted farm operations within the meaning of AML §305-a and that the town failed to show that its restriction on mobile homes was necessary to protect the public health or safety. They also sought an order directing the town to issue building permits and certificates of occupancy for the mobile homes.

The farmers moved for summary judgment dismissing the complaint. In support of their motion, they submitted a letter addressed to the town from the department that stated that the "department has consistently viewed mobile homes used for farmworker residences as protected 'on-farm buildings'" and that it viewed application of the town's zoning code in the farmers' case as an unreasonable restriction on farm operations.

The Supreme Court, Onondaga County, granted summary judgment to the town, permanently enjoining the farmers from using mobile homes without building permits and certificates of occupancy. The court reasoned that AML §305-a did not "create an exemption from local zoning authorities or ordinances for all 'farm operations'" and, specifically, that the statute did not provide any protection to "farm residential buildings," including mobile homes. The Appellate Division, Fourth Department, affirmed, and the case reached the Court of Appeals.

The court reversed. In its decision, it pointed out that the department, which appeared amicus curiae on the farmers' behalf, had concluded that mobile homes used for farmworker residences were protected "on-farm buildings." Moreover, the court noted, the department had decided that the town's zoning code, insofar as it prohibited the siting of mobile homes having an area of less than 1,100 square feet for farm labor housing on farm operations, unreasonably restricted such farm operations.

The court found that the department's views were entitled to deference. It also determined that the town had not made any evidentiary showing that the statutory exception to the ban on unreasonable regulations of farm operations applied—that is, that an absolute ban on single-wide mobile homes was needed because "the public health or safety [was] threatened."

Therefore, the court concluded, it agreed with the farmers and the department that the farmers were entitled to summary judgment dismissing the town's complaint.

A few years later, and in reliance upon the Court of Appeals' decision, the Appellate Division, Third Department, in *Inter-Lakes Health v. Town of Ticonderoga Town Board*,[11] held that where a municipality seeks to administer a zoning ordinance that is in conflict with the policy objectives of the Agriculture and Markets Law, the inconsistent zoning law is superseded by AML §305-a(1).

The Department of Agriculture and Markets encourages municipalities to seek its guidance prior to drafting and adopting laws that may restrict farming operations so that it can provide an informal determination regarding the law's enforceability.

Conclusion

Certainly, not every local regulation that affects farming operations in an agricultural district will be precluded by AML §305-a. For example, the department itself has recognized that a local setback requirement of 100 feet for buildings constructed along state roads and 75 feet for buildings constructed along county roads did not unreasonably restrict farm structures when applied equally to farmland and land used for other purposes, given the municipality's justification of the ordinance as an effort to "lessen congestion in the roads" and "facilitate adequate provision of transportation."[12]

Still, the reach of AML §305-a is quite broad. At least one court[13] has ruled that use of property to raise, train, and sell polo ponies constituted "agricultural production" within the meaning of AML §301. Local governments, property owners, and neighbors of farmland, therefore, should carefully consider the implications of AML §305-a when proposing, adopting, or applying local property regulations to farm operations in designated agricultural districts.

1. L 1971, ch 479, §1.
2. AML §300.
3. AML §303.
4. See, http://www.agriculture.ny.gov/AD/Richard-Ball-bio.html.
5. See, New York State Departments of State and Agriculture and Markets, "Local Laws and Agricultural Districts: How Do They Relate?" (hereinafter, Local Laws and Agricultural Districts), available at http://www.dos.ny.gov/lg/publications/Local_Laws_and_Agricultural_Districts.pdf.
6. See, "Local Laws and Agricultural Districts: Guidance for Local Governments and Farmers," available at http://www.agriculture.ny.gov/AP/agservices/new305/guidance.pdf.
7. Local Laws and Agricultural Districts, supra n. 4.
8. Id.
9. Id.
10. 96 N.Y.2d 558 (2001).
11. 13 A.D.3d 846 (3d Dept. 2004).
12. Local Laws and Agricultural Districts, supra n. 4.
13. *Town of Southampton v. Equus Associates*, 201 A.D.2d 210 (2d Dept. 1994).

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