



**Town of Hurley  
ZONING BOARD OF APPEALS  
10 Wamsley Place  
PO Box 569  
Hurley, NY 12443**

**RESOLUTION DETERMINING APPEAL OF DETERMINATION OF ZONING ENFORCEMENT  
OFFICER/CODES ENFORCEMENT OFFICER**

Zoning Board of Appeals File-#02-DoglasTrust-SBL-55\_2-3-15\_110-Appeal  
Appellant Address: 8 Dug Hill Rd  
Subject Property: 55\_2-1-8-1756 Hurley Mtn Rd/A4/5.9Acres  
ZEO denial: 2023-12-05; Appeal submitted: 2024-01-04

**Date: 2024-04-11**

**Motioned by:**

**Seconded by:**

**WHEREAS**, the applicant, Dave T. Doglas Trust-Howard Altman Trustee (the “Applicant”) owning real property at 8 Dug Hill Rd, Section Block and Lot number 55.2-3-15.110 in the A4 zoning district of the Town of Hurley and containing 1.12 acres has submitted an application (“Application”) to the Town of Hurley Zoning Board of Appeals (“ZBA”) to appeal the Determination by Zoning Enforcement Officer/Codes Enforcement Officer (“ZEO/CEO”) Paul Economos dated 2023-12-05 (the “Determination”) relating to alleged potentially illegal activities outlined in a written complaint submitted on 2024-12-05 (“Complaint”) at 1756 Hurley Mountain Road (the “Property”); Section Block and Lot number; 55.2-1-8 owned by Hurley Mtn. Farms, LLC., which is located in the A4 zoning district of the Town of Hurley and contains 5.6 acres; and

**WHEREAS**, on 2023-11-22 the Applicant filed a formal, written complaint with the ZEO/CEO alleging there were illegal activities occurring on the Property, a copy of said complaint is annexed to this determination as Exhibit ‘A’;

**WHEREAS**, the complaint alleged that the Property, which was determined in 2014 upon Appeal to the ZBA of the Town of Hurley Zoning Law to be conducting activities wholly allowed as Agricultural as per New York State Ag & Markets and was not appealed, was conducting activities outside the scope of Agriculture and were instead a commercial business not allowed per Attachment 1-Density Control Schedule of Chapter 210-Zoning of the Town of Hurley Code; and

**WHEREAS**, on 2024-12-05 the ZEO/CEO responded to the Complaint with the following written Response (“Response”): “Please be advised that the subject property was visited and inspected on November 21, 24, 28, 30 and again on December 1. No activity was observed on any of those inspections, and your complaint could not be substantiated by visual confirmation. The complaint is not deemed valid and the file is now closed.”, a copy of said Response is annexed to this Determination as exhibit ‘B’; and

**WHEREAS**, the Applicant appealed the ZEO/CEO Response on 2024-01-04; and

**WHEREAS**, the Appeal was hand-delivered to the Clerk of the Zoning Board of Appeals and the ZEO/CEO on 2024-01-04 by a Representative of the law offices of Marvin, Kemp & Cole PLLC; and

**WHEREAS**, the owners of the subject property: Messrs. Andrew Zell and Lee Winnie were represented by Michael Moriello, ESQ.; and

**WHEREAS**, the Appeal was not received by the deadline for the 2024-01-12 Zoning Board of Appeals meeting and so the Application was placed on the 2024-02-08 Agenda under ‘New Business’; and



**Town of Hurley  
ZONING BOARD OF APPEALS  
10 Wamsley Place  
PO Box 569  
Hurley, NY 12443**

**RESOLUTION DETERMINING APPEAL OF DETERMINATION OF ZONING ENFORCEMENT  
OFFICER/CODES ENFORCEMENT OFFICER**

**WHEREAS**, at a regularly scheduled ZBA meeting, the Board determined the Appeal to be timely under §210-60A: “Notice of appeal shall be filed with the Code Enforcement Officer and the Secretary to the Board of Appeals in writing, in a form required by such Board, within 30 days of the date of the action appealed from, specifying the grounds thereof” and

**WHEREAS**, on 2024-02-08, the ZBA classified the Appeal as a Type II action under the State Environmental Quality Review Act (“SEQRA”) pursuant to 6 NYCRR § 617.5(c)(37), “interpretation of an existing code, rule or regulation”; and

**WHEREAS**, an application for an appeal and interpretation is not subject to referral to the Ulster County Planning Board pursuant to General Municipal Law § 239-m; and

**WHEREAS**, at a regularly scheduled ZBA meeting held on 2024-02-8, the Board motioned, Seconded and passed unanimously a motion to schedule a public hearing on 2024-03-14 at 7:20PM or thereafter as the Agenda allowed and directed the Clerk to publish a legal notice in the daily Freeman, the Town’s official newspaper and notify the neighbors via written correspondence by certified mail as is customary for all public hearings in the Town of Hurley; and

**WHEREAS**, a legal notice was published in the Daily Freeman on 2024-03-05 and a letter was sent via certified mail to all properties within two-hundred-fifty-feet (250’) of the Property which was a total of thirteen (13) properties including the Applicant and the subject Property; and

**WHEREAS**, each of the letters were tracked via the USPS.com website and twelve (12) were delivered, one (1) was not; and

**WHEREAS**, a duly noticed public hearing was opened on 2024-03-14, and closed to in person testimony on 2024-03-14 with written comments accepted until 2024-03-28; and

**WHEREAS**, the ZBA has reviewed the previous Appeal from 2014-11-14 and has found that that in regard to the Use of the Property at 1756 Hurley Mtn Rd, SBL 55.2-1-8, the activities described and determined to be an Agricultural use by a formal Appeal, a copy of which is annexed to this Determination as exhibit ‘C’, continue to be consistent with the Use determined to be Agricultural;

**WHEREAS**, the activities, according to the Owners stated as part of the Appeal of CEO Glenn Hoffstatter’s Determination that the proposed operation did not fit an Agricultural Use were described as such: “an Agricultural Nursery, in which we will be planting and growing various species of trees and shrubs. To do such farming, it will require us to put nutrients into the soil and control vegetation around the plantings. In order to do this, we will be composting, grinding and screening several raw products on site. Compost that is screened will be needed for plant bedding and for future plantings. The resulting mulch that we produce is unique. Our grinder has a one-inch screen that produces fine mulch that is very conducive for weed control and anaerobic decomposition. All compost has to be screened and mixed in order to product a proper topsoil mix. We will not be marketing the off farm generated organic matter until It Is processed on our farm operation into mulch or topsoil. It is the resultant mulch which will be marketed consistently with





**Town of Hurley  
ZONING BOARD OF APPEALS  
10 Wamsley Place  
PO Box 569  
Hurley, NY 12443**

**RESOLUTION DETERMINING APPEAL OF DETERMINATION OF ZONING ENFORCEMENT  
OFFICER/CODES ENFORCEMENT OFFICER**

Section 301(16) of the Agriculture and Markets Law.

Composting, grinding and screening of topsoil must be done in large quantities In order for it to be cost effective for the farm. As a result, we will have agricultural by-products that are produced on the farm and agricultural waste at the farm operation. Such by-products will need to be marketed in order to accommodate the farm operation on the premises and to manage this agricultural commodity. Composting and mulching for this farm operation requires the products to be maintained at a temperature suitable for composting. In order to do so, this operational by-product cannot sit for a long period of time or it will be rendered valueless.

Again, the off farm generated organic matter will not be marketed as mulch or topsoil until It Is agriculturally processed, mixed and/or handled as part of our farm operation.”

**WHEREAS**, the ZBA made a Determination of CEO Glenn Hoffstatter’s denial that the Use was Agriculture on 2014-11-14 and it was not appealed within thirty (30) days and;

**WHEREAS**, once a Use has been established via an Appeal and said Appeal has not been challenged via CPLR Article 78 and the Use has been continuous, the Use cannot be the subject of a new Appeal; and

**WHEREAS**, as of 2014-10-17, the land in question has been classified by the Town of Hurley Assessor’s Office as code 100-Agriculture; and

**WHEREAS**, the land is in a certified Agricultural District; and

**WHEREAS**, the activities involved in the Complaint were not found to have valid occurrences through numerous site visits by the ZEO/CEO or his co-workers; and

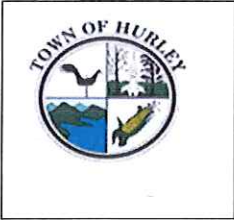
**WHEREAS**, the ZBA requested ZEO Paul Economos to add an addendum to his original Determination giving further clarity to any activities he saw or did not see during his site visits; and

**WHEREAS**, he submitted a memo to the ZBA dated 2024-03-18, a copy of which is annexed to this Determination as exhibit ‘D’ which stated in part .....

1. ” Mulch processing was included and approved by the ZBA at the 2014 appeal along with screening and composting. The allegations that this is a "mulch processing facility" is specious as this activity is one small aspect of the overall use.
2. Heavy equipment, trucks, storage containers and similar are normal in agricultural operations and I have seen all of these in routine use at the former Gill Farms which I visited and inspected frequently. The Standard Industrial Classification Manual (on which the Table of Use Regulations is based) Division A. classifies Forestry as Major Group 08, a subcategory of Agriculture within Division A.
3. No burning or evidence of burning was observed. There were no fire pits, no burn barrels, no charred logs or other charred wood....”

**WHEREAS**, the Zoning Law does not provide for any option to Appeal a Determination by the ZEO/CEO that no activities were observed; and

**WHEREAS**, the activities outlined in the original Complaint are considered Property Maintenance



**Town of Hurley  
ZONING BOARD OF APPEALS  
10 Wamsley Place  
PO Box 569  
Hurley, NY 12443**

**RESOLUTION DETERMINING APPEAL OF DETERMINATION OF ZONING ENFORCEMENT  
OFFICER/CODES ENFORCEMENT OFFICER**

issues, which are managed by the Building Department and/or other Agencies such as New York State Department of Conservation (hereafter "NYSDEC") or New York State Ag & Markets; and

**WHEREAS**, if the ZEO/CEO is unsuccessful at bringing the Property Maintenance complaints to a closure, They have the ability to issue a Cease and Desist and issue an appearance ticket to the Town of Hurley Court; and

**WHEREAS**, the Appellant has alleged that the Applicants are conducting activities outside the scope of the types of activities they stated to the ZBA would be occurring during the Appeal in 2014 and as such, the ZBA can re-open the Use issue and whether or not this is an Agricultural Use; and

**WHEREAS**, pursuant to Section 210-60E of the Town of Hurley Zoning Law, the ZBA may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and shall make such order, requirement, decision or determination as, in its opinion, ought to be made.

**NOW THEREFORE BE IT RESOLVED** that the ZBA makes the following findings:

1. This Appeal requires the determination of two issues. The first is: A) whether the Property Owners are conducting activities considered as Agricultural and B) whether certain alleged activities are outside the scope of Agriculture.
2. The same question raised in A) above is moot and not an issue that the ZBA can Determine as it was already determined to be Agricultural by majority vote on 2014-11-14.
3. With regard to item B) above, the activities alleged to occur, had they been found to be occurring by the ZEO/CEO are the same types of activities alleged to be occurring in the Complaint.
4. The activities alleged to occur in the Complaint are considered Property Maintenance issues, which are not under the purview of this Board to address.
5. The 2014-09-15 letter written by the Applicants to CEO Glenn Hoffstatter, Exhibit "C" outlines the potential activities. The addendum by ZEO/CEO Economos, exhibit "D" also identifies that many of the alleged activities outlined in the Complaint are considered Agriculture.
6. Once a Use is Determined by the ZBA, on Appeal, to be valid and that Determination is not Appealed and the Use has been consistently happening, the question of whether the Use is allowed cannot be re-examined by the ZBA.

**BE IT FURTHER RESOLVED**, that for the foregoing reasons, the Appeal is **DENIED** and remanded back to the ZEO/CEO for addressing any potential Property Maintenance or other potential Code violations of alleged activities that fall outside the allowed Agricultural activities.

**BE IT FURTHER RESOLVED** that a copy of this decision shall be filed with the Town Clerk, the Zoning Enforcement Officer, the Building Inspector, and the Secretary of the Planning Board within five days of adoption of this resolution.





Town of Hurley  
ZONING BOARD OF APPEALS  
10 Wamsley Place  
PO Box 569  
Hurley, NY 12443

**RESOLUTION DETERMINING APPEAL OF DETERMINATION OF ZONING ENFORCEMENT  
OFFICER/CODES ENFORCEMENT OFFICER**

Roll Call:

Joshua Vogt	_____	AYE	_____	NAY	_____	ABSENT	_____	ABSTAIN
Kara Snyder	_____	AYE	_____	NAY	_____	ABSENT	_____	ABSTAIN
Orin Shands	_____	AYE	_____	NAY	_____	ABSENT	_____	ABSTAIN
Alex Marra	_____	AYE	_____	NAY	_____	ABSENT	_____	ABSTAIN
Andrew Shapiro	_____	AYE	_____	NAY	_____	ABSENT	_____	ABSTAIN
Liston Freeman	_____	AYE	_____	NAY	_____	ABSENT	_____	ABSTAIN

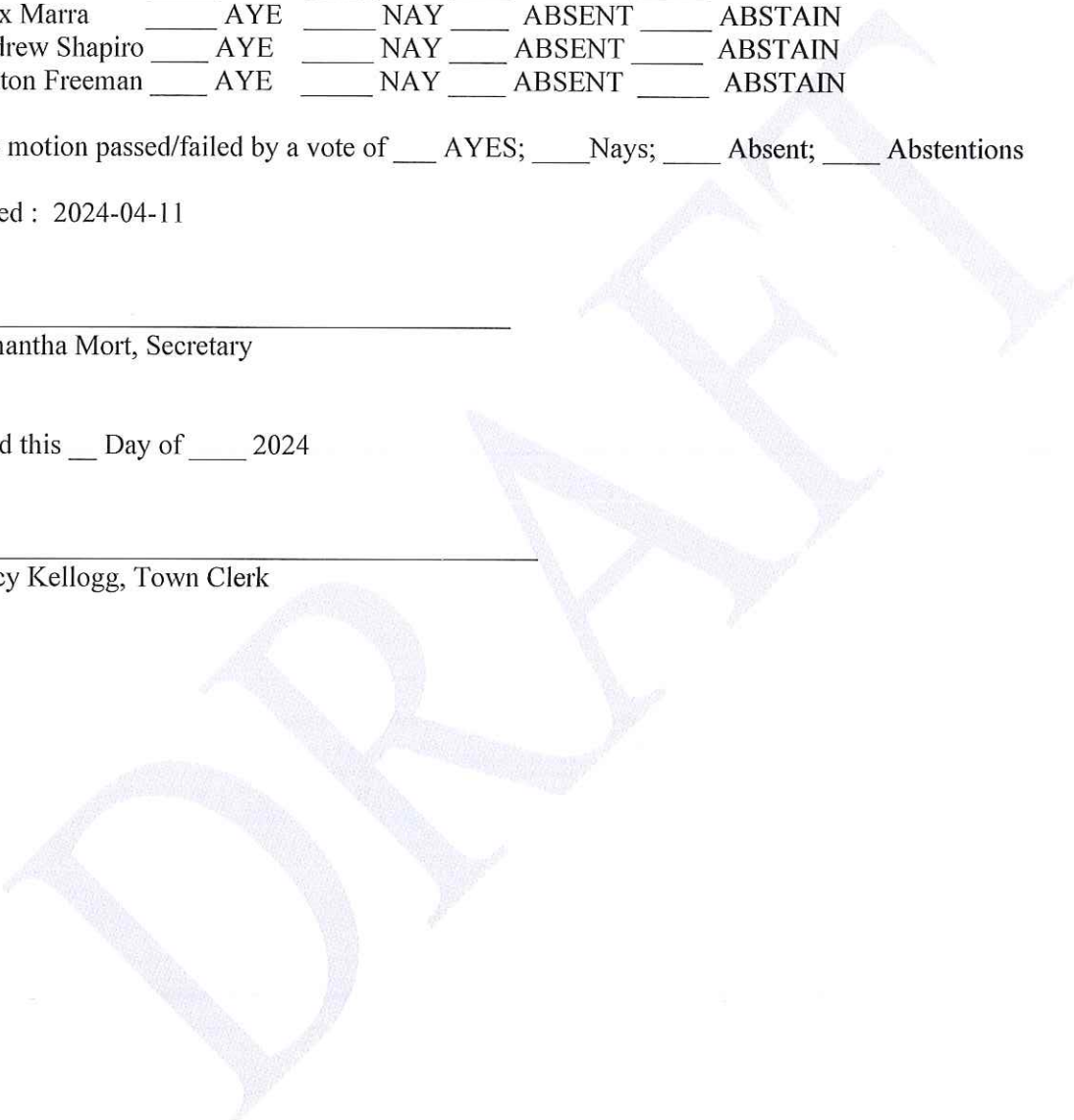
The motion passed/failed by a vote of \_\_\_ AYES; \_\_\_ Nays; \_\_\_ Absent; \_\_\_ Abstentions

Dated : 2024-04-11

\_\_\_\_\_  
Samantha Mort, Secretary

Filed this \_\_\_ Day of \_\_\_ 2024

\_\_\_\_\_  
Tracy Kellogg, Town Clerk



# EXHIBIT A

MKC

Exhibit A p1

Sean M. Kemp  
Justin L. Cole  
*Of Counsel*  
John R. Marvin

LAW OFFICES  
MARVIN KEMP & COLE PLLC  
44 WEST MARKET STREET - P.O. BOX 151  
RHINEBECK, NEW YORK 12572

Telephone: (845) 876-3024  
Facsimile: (845) 876-5622  
www.marvinkemp.com

November 20, 2023

Via email: [building@townofhurley.org](mailto:building@townofhurley.org)

Ms. Erin Stewart, Building Clerk  
Mr. Paul Economos, ZEO  
Mr. Troy Ashdown, Building Inspector and Code Officer  
Town of Hurley, Building Department  
PO Box 569/10 Wamsley Place  
Hurley, NY 12443

Re: Zoning Enforcement Complaint – 1756 Hurley Mt. Road (SBL #55.2-1-8)  
Our File No.: 6965.27.01.23

Dear Ms. Stewart, Mr. Economos and Mr. Ashdown:

I am writing on behalf of the Dave T. Douglas Trust, the owner of real property commonly known as 8 Dug Hill Road, Town of Hurley, New York (SBL# 55.2-3-15.110).

Please allow this to serve as a formal written complaint regarding the unlawful use of nearby real property owned by Hurley Mountain Farms LLC and commonly known as 1756 Hurley Mt. Road, Town of Hurley, New York (SBL #55.2-1-8) (the "Property").

In 2014, the owners of Hurley Mountain Farms LLC, Mr. Andrew Zelle and Mr. Lee Winne, represented to the Town of Hurley that they were going to use the Property for agricultural purposes. They stated that they would be growing various species of trees and shrubs on the Property in addition to processing mulch on the Property in accordance with NYS Ag & Markets law. According to Planning Board meeting minutes from June 2014, the owners had no plans to erect buildings or park/store heavy equipment and trucks at the Property. Unfortunately, the current use of the Property is not consistent with any of the representations that were previously made to the Town of Hurley by Mr. Zelle and Mr. Winne.

Currently, the Property is part of a full-scale commercial operation related to a tree removal company, LW Tree Service, which is owned by Lee Winne. This use deviates significantly from any legitimate agricultural purpose. The Property is essentially a depot for storage and processing waste generated from commercial tree removal activities. Visible from the road are

Exhibit A

P2

substantial piles of trees, mulch and other debris. Furthermore, in direct opposition to the owners' prior assurances, large trucks, construction equipment, sheds and shipping containers are being parked and stored on the Property. Put simply, the Property looks like a dump.

It is evident that the Property is not being used for any legitimate agricultural purpose but instead serves LW Tree Service as a hub for storing commercial vehicles and equipment, as well as processing wood that it cuts down for its clients. Daily operations involving obnoxiously loud equipment and burning piles of debris, which produce dark clouds of smoke and ash, severely interfere with the reasonable use and enjoyment of nearby properties. This is clearly an unlawful commercial use in a residential area.

While my client respects and supports legitimate agricultural uses within the community, this operation, falsely presented as agricultural, is a commercial enterprise that operates in direct contravention of the local zoning law. The continued use of the Property for these purposes is not only a violation of the Town of Hurley Zoning Code but also poses significant health and safety risks to the community. Additionally, the location of this unlawful use near the Englishman's Creek, which traverses the Property, only exacerbates the potential health and safety risks.

Based on the foregoing, we respectfully request that the Town of Hurley promptly investigate this complaint. Please do not hesitate to contact me with any questions or concerns.

Thank you for your attention to this matter.

Very truly yours,



Sean M. Kemp



# EXHIBIT B

Town of Hurley  
P.O. Box 569  
Hurley, New York 12443  
Phone: 845-331-7474  
Fax: 845-331-5502



*Exhibit B*  
Paul Economos  
Building Inspector  
buildinginspector@townofhurley.org

12/5/2023

Sean M. Kemp, Esq.  
Law Offices  
Marvin Kemp & Cole PLLC  
44 West Market Street – PO Box 151  
Rhinebeck, NY 12572

Re: Zoning complaint  
1756 Hurley Mountain Road  
SBL #55.2-1-8

Dear Counselor Kemp,

Please be advised that the subject property was visited and inspected on November 21, 24, 28, 30 and again on December 1<sup>st</sup>. No activity was observed on any of these inspections, and your complaint could not be substantiated by visual confirmation. The complaint is not deemed valid and the file is now closed.

Regards,

A handwritten signature in black ink, appearing to read "Paul Economos", with a horizontal line underneath.

Paul Economos  
Building Inspector, Zoning Enforcement Officer  
Town of Hurley  
PO Box 569  
Hurley, NY 12443

Cc: Andrew Zell  
Lee Winne



# EXHIBIT C



Exhibit C pt.

Town of Hurley  
PO Box 569  
Hurley, New York 12443  
845-331-7474 Ext. 4  
Fax 845-331-0058

National Historic Landmark

Glenn Hoffstatter  
Code Enforcement Officer  
Building Inspector  
MS4 Stormwater Officer  
building@townofhurley.org

Mr. Michael Moriello  
Riseley & Moriello  
P.O. Box 4465, 111 Green Street  
Kingston, New York 12402

9/2/2014

RE: Zoning interpretation for Property (SBL 55.2-1-8) Dug Hill Road Hurley, New York.

Dear Michael:

I am in receipt of your letter and supporting documentation dated August 19, 2014 requesting an interpretation with regards to a proposed agricultural use located at the property referenced above.

The referenced property is located in the A-4 District according to the Town of Hurley, Zoning Map. Section 210-10 of the Town Zoning Code states, Permitted uses in all districts shall be in accordance with the Table of Use Regulations. The Table of Use Regulations states that an Agricultural Use (not including the keeping of fowl or farm animals) is a Use Permitted by Right in the A-4 District.

With regards to your request, it is my interpretation that the use of the referenced property as an agricultural use in accordance with sections 301.2 d (Horticultural Specialties) and 301.16 (Compost, mulch or other organic biomass crops) of the New York State Agriculture and Markets Law is a use permitted by right and that Site Development Plan and Special Use Permit approvals are not required.

However, the referenced property is located in a Special Flood Area as shown on Flood Insurance Rate Map # 360857 0009 C, which may require an Elevation Certificate and/or a Flood Plain Development Permit in accordance with the Code of the Town of Hurley Section 100 (Flood Plain Prevention) depending on the actual use.

Should you have any further questions, please feel free to contact me.

Sincerely,

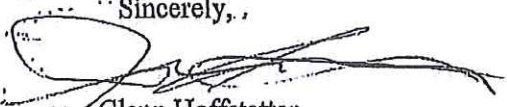
  
Glenn Hoffstatter  
Code Enforcement Officer



Exhibit C p 2



National Historic Landmark

Town of Hurley  
PO Box 569  
Hurley, New York 12443  
845-331-7474 Ext. 4  
Fax 845-331-0058

Glenn Hoffstatter  
Code Enforcement Officer  
Building Inspector  
MS4 Stormwater Officer  
building@townofhurley.org

9/4/2014

Mr. Michael Morlillo  
Riseley & Morlillo  
P.O. Box 4465, 111 Green Street  
Kingston, New York 12402

RE: Zoning interpretation for Property (SBL 55.2-1-8) Dug Hill Road Hurley, New York.

Dear Michael:

I am in receipt of your letter and supporting documentation dated August 19, 2014 requesting an Interpretation with regards to a proposed agricultural use located at the property referenced above.


The referenced property is located in the A-4 District according to the Town of Hurley, Zoning Map. Section 210-10 of the Town Zoning Code states, Permitted uses in all districts shall be in accordance with the Table of Use Regulations. The Table of Use Regulations states the an Agricultural Use (not including the keeping of fowl or farm animals) is a Use Permitted by Right in the A-4 District.

With regards to your request, it is my Interpretation that the use of the referenced property as an agricultural nursery as defined as a "Crop" under section 301-a 2 d (Horticultural Specialties) of New York State Agriculture and Markets Law would be a use permitted by right and that Site Development Plan and Special Use Permit approvals are not required.

However, if by employ you mean to import top soil, mulch, compost or other organic matter to be ground, screened, mixed or processed on site and then used or sold off site, my opinion is that this would not be considered an "agricultural use" pursuant to section 301-a(16) of the Agriculture and Markets Law of New York State and not an allowable use in the A-4 district.

Should you have any further questions, please feel free to contact me.

Sincerely,

  
Glenn Hoffstatter

ANDREW ZELL  
PO Box 97  
Hurley, New York 12443

Exhibit C  
PB

September 15, 2014

Town of Hurley Building Inspector  
Mr. Glenn Hoffstatter  
Town Hall, Wamsley Place  
PO Box 569  
Hurley, New York 12443

RE: In the Matter of the Request for Interpretation for the  
Planned Agricultural Use of Andrew Zell and Lee Winne

Dear Glenn:

As the August 19, 2014 Request for Interpretation submitted by Michael Moriello, Esq. is somewhat rambling, I am writing this letter so you may better understand the intended use of the future farm operation on Hurley Mountain Road and its consistency with the Agriculture and Markets Law.

Lee and I intend on using the land for an Agricultural Nursery, in which we will be planting and growing various species of trees and shrubs. To do such farming, it will require us to put nutrients into the soil and control vegetation around the plantings. In order to do this we will be composting, grinding and screening several raw products on site. Compost that is screened will be needed for plant bedding and for future plantings. The resulting mulch that we produce is unique. Our grinder has a one inch screen that produces fine mulch that is very conducive for weed control and anaerobic decomposition. All compost has to be screened and mixed in order to produce a proper topsoil mix. We will not be marketing the off farm generated organic matter until it is processed on our farm operation into mulch or topsoil. It is the resultant mulch which will be marketed consistently with Section 301(16) of the Agriculture and Markets Law.

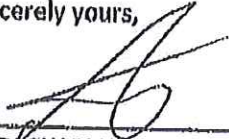
Composting, grinding and screening of topsoil must be done in large quantities in order for it to be cost effective for the farm. As a result, we will have agricultural by-products that are produced on the farm and agricultural waste at the farm operation. Such by-products will need to be marketed in order to accommodate the farm operation on the premises and to manage this agricultural commodity. Composting and mulching for this farm operation requires the products to be maintained at a temperature suitable for composting. In order to do so, this operational by-product cannot sit for a long period of time or it will be rendered valueless. Again, the off farm generated organic matter will not be marketed as mulch or topsoil until it is agriculturally processed, mixed and/or handled as part of our farm operation.



Exhibit Copy

I hope this letter helps to clarify the Intended use of the property. I believe that this Intended use is permitted by right in the A-4 Zoning District under the Town of Hurley Zoning Law. Current delays have already resulted in the possible loss on next year's season for our farm operation. Therefore, I am formally requesting that you rescind the relevant portion of your September 4, 2014 Interpretation consistent with this request, due to the fact that there may have been a miscommunication on the Intended agricultural use of the property.

Sincerely yours,



---

ANDREW ZELL

Exhibit C p5



National Historic Landmark

Town of Hurley  
PO Box 569  
Hurley, New York 12443  
845-331-7474 Ext. 4  
Fax 845-331-0058

Glenn Hoffstatter  
Code Enforcement Officer  
Building Inspector  
MS4 Stormwater Officer  
building@townofhurley.org

Mr. Andrew Zell  
PO Box 97  
Hurley, New York 12443

September 18, 2014

RE: Request for interpretation

Dear Mr. Zell

Thank you for your letter dated September 15, 2014 clarifying the proposed use and processes involved in regards to your request for interpretation of planned agricultural uses described in the August 19 2014 letter I received from Mr. Moriello.

Upon reviewing your letter, my interpretation has not changed from the interpretation of the letter received from Mr. Moriello. It is still my opinion that on-farm processing, mixing or handling of off-farm generated organic matter to be partially used on-farm and partially used off-farm, or sold is not in conformance with New York States Agriculture and Markets Law, Article 25AA section 301 (16).

With the proposed use not in conformance with section 301 (16) it is my interpretation that the use is not a farm operation as defined in section 210-5 (Terms Defined) of the Code of the Town of Hurley or section 301 (11) of the agriculture and markets Law.

With the use as proposed it is my determination that it is not an agricultural use but a retail or wholesale use and is not an allowable use in the A-4 District.

Sincerely,

  
Glenn Hoffstatter

**RISELEY & MORIELLO**  
**ATTORNEYS AT LAW**  
111 Green Street  
Post Office Box 4465  
Kingston, New York 12402  
E-Mail: mmrfr@aol.com

*Exhibit C p 6*

Richard F. Riseley  
Michael A. Moriello

Tel: (845) 338-6603  
Fax: (845) 340-1614

**Supplement to Appeal in the Matter of the  
Application of Andrew Zell:  
Town of Hurley Zoning Board of Appeals**

With respect to the September 4, 2014 Interpretation by the Town of Hurley Building Inspector, it is submitted that the August 19, 2014 Request for Interpretation speaks for itself with respect to the agricultural use proposed by my client.

In this regard, I further note that the plain meaning of the New York State Department of Agriculture and Markets Law specifically calls for the activities which my client plans to undertake to be classified as agricultural [see Sections 301-1(11) and 301-a(16) of the Agriculture and Markets Law of New York State]. In addition, based upon my reading of the September 4, 2014 Interpretation, it appears that the Town of Hurley Building Inspector agrees, to a point.

Where the disagreement appears to lie is with respect to the paragraph of the Interpretation which reads as follows:

"However, if by employ you mean to import top soil, mulch, compost or other organic matter to be ground, screened, mixed or processed on site and then used or sold off site, my opinion is that this would not be considered an "agricultural use" pursuant to Section 301-a(16) of the Agriculture and Markets Law of New York State and not an allowable use in the A-4 district."

I have reviewed the New York State Department of Agriculture and Market's "Guidelines for Review of Local Laws Affecting On-Farm Composting Facilities" and with regard to the same, posit the following:

a.) The "guidelines" have no force of law and have been developed as internally by the department.



Exhibit C 07

b.) The guidelines are superceded by the statutory language of Sections 301-a(11) and 301-a(16) of the Agriculture and Markets Law of New York State, which does not limit the off farm marketing of the agricultural product as set forth within Petitioner's September 15, 2014 correspondence to the Town of Hurley Building Inspector.

c.) There is no language within the Town of Hurley Zoning Law which countermands the conclusions within paragraphs (a) and (b) above.

d.) The Town of Hurley Building Inspector has offered no evidentiary proof in support of his September 4, 2014 and September 18, 2014 Interpretations. Said Interpretations are based upon what appears to be his naked opinion.

Based upon the foregoing, it is submitted that the Interpretation of the Town of Hurley Building Inspector should be reversed in order to permit the agricultural activities described within Petitioner's September 15, 2014 correspondence to be pursued as of right.

In the alternative and in the event that the Town of Hurley Zoning Board of Appeals does not agree with the Petitioner, it is requested that this board overrule that portion of the Town of Hurley Building Inspector's September 4, 2014 Interpretation which concludes, that the "import of top soil, mulch, compost or other organic matter to be ground, screened, mixed or processed on site"... is "not an allowable use in the A-4 district".

Based upon the facts and law cited within the submittal, it is further requested that the Town of Hurley Zoning Board of Appeals overrule the entire September 18, 2014 Interpretation of the Town of Hurley Building Inspector [see copy of your writer's related correspondence annexed].

Based upon my review of the Town of Hurley Zoning Law and other authority, such use would be "allowable" within the A-4 Zoning District as "Extraction operations and soil mining in compliance with Section 210-33".

Exhibit C 08

This use would be subject to Town of Hurley Planning Board review under site plan and conditional use permit criteria in a discretionary manner and subject to SEQRA review and any associated permitting by other involved agencies.

If a portion of the Petitioner's planned use upon the premises is not agricultural under the Town of Hurley Zoning Law, it certainly should be a permitted use under the Use Table and Section 210-33 of said Law, subject to discretionary reviews as aforesaid.

This request for alternative relief is made with the reservation of all rights at law under the original Request for Interpretation that all of Petitioner's planned use of the premises is agricultural.

WHEREFORE, it is requested that the Town of Hurley Zoning Board of Appeals rule in favor of Petitioner as follows:

1.) That the planned agricultural use by Petitioner, including the processing and marketing of mulch and topsoil as agricultural by-products, is an as of right use under the Town of Hurley Zoning Law and the Agriculture and Markets Law of New York State; or in the alternative,

2.) That the planned agricultural use by Petitioner includes a non-agricultural use (processing and marketing of mulch and soil) which requires the issuance of a conditional use permit, together with site plan approval by the Town of Hurley Planning Board under Section 210-33 of the Town of Hurley Zoning Law and following all required discretionary reviews.

Thanking the Town of Hurley Zoning Board of Appeals for its consideration, this Supplement to Appeal is,

Dated: September 24, 2014

Respectfully Submitted,

\_\_\_\_\_  
Michael A. Moriello, Esq.

MAM:def



Exhibit CP 9

**RISELEY & MORIELLO**  
ATTORNEYS AT LAW  
111 Green Street  
Post Office Box 4465  
Kingston, New York 12402  
E-Mail: mamrfr@nok.com

Tel: (845) 338-6603  
Fax: (845) 340-1614

Richard F. Riseley  
Michael A. Moriello

September 24, 2014

Town of Hurley Town Board  
Mr. Gary Bellows, Supervisor  
Town Hall  
10 Wamsley Place  
PO Box 569  
Hurley, New York 12443

RE: In the Matter of the Appeal of Andrew Zell:  
Town of Hurley Zoning Board of Appeals

Dear Gary and Board Members:

Enclosed please find copy of September 18, 2014  
correspondence by the Town of Hurley Building Inspector, same in  
connection with the above referenced matter.

I do not intend to take up your time with a long  
dissertation of the facts which have led to this correspondence,  
as the proceeding before the Town of Hurley Zoning Board of  
Appeals will presumably bring my client's problem into clearer  
focus.

However, I do believe that it is important to state that I  
find this correspondence to be antagonistic towards my client in  
light of the fact that the Building Inspector previously stated  
his unsubstantiated opinion within a September 4, 2014  
Interpretation [copy annexed].

It is no secret that the Building Inspector and my client  
view the agricultural use of the Matthews/Piskoz premises for  
processing of organic matter and the off farm marketing of mulch  
and topsoil in a differing manner. Accordingly, my client has  
properly availed himself of the laws of the Town of Hurley and  
New York State to obtain relief from the Building Inspector's  
opinion.

In consideration of the foregoing, I would request that the  
Town Board advise the Building Inspector to refrain from further  
gratuitous offerings of his opinion, as the proceedings before



Exhibit C  
P 10

Town of Hurley  
PO Box 569  
Hurley, New York 12443  
845-331-7474 Ext. 4  
Fax 845-331-0058



National Historic Landmark

Glenn Hoffstatter  
Code Enforcement Officer  
Building Inspector  
MS4 Stormwater Officer  
building@townofhurley.org

Mr. Andrew Zell  
PO Box 97  
Hurley, New York 12443

September 18, 2014

RE: Request for interpretation

Dear Mr. Zell


Thank you for your letter dated September 15, 2014 clarifying the proposed use and processes involved in regards to your request for interpretation of planned agricultural uses described in the August 19 2014 letter I received from Mr. Moriello.

Upon reviewing your letter, my interpretation has not changed from the interpretation of the letter received from Mr. Moriello. It is still my opinion that on-farm processing, mixing or handling of off-farm generated organic matter to be partially used on-farm and partially used off-farm, or sold is not in conformance with New York States Agriculture and Markets Law, Article 25AA section 301 (16).

With the proposed use not in conformance with section 301 (16) it is my interpretation that the use is not a farm operation as defined in section 210-5 (Terms Defined) of the Code of the Town of Hurley or section 301 (11) of the agriculture and markets Law.

With the use as proposed it is my determination that it is not an agricultural use but a retail or wholesale use and is not an allowable use in the A-4 District.

Sincerely,

  
Glenn Hoffstatter

ANDREW ZELL  
PO Box 97  
Hurley, New York 12443

RECEIVED  
SEP 16 2014

TOWN OF HURLEY  
BUILDING DEPARTMENT

September 15, 2014

Town of Hurley Building Inspector  
Mr. Glenn Hoffstatter  
Town Hall, Wamsley Place  
PO Box 569  
Hurley, New York 12443

RE: In the Matter of the Request for Interpretation for the  
Planned Agricultural Use of Andrew Zell and Lee Winne

Dear Glenn:

As the August 19, 2014 Request for Interpretation submitted by Michael Moriello, Esq. is somewhat rambling, I am writing this letter so you may better understand the intended use of the future farm operation on Hurley Mountain Road and its consistency with the Agriculture and Markets Law.

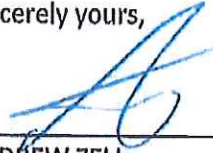
Lee and I intend on using the land for an Agricultural Nursery, in which we will be planting and growing various species of trees and shrubs. To do such farming, it will require us to put nutrients into the soil and control vegetation around the plantings. In order to do this we will be composting, grinding and screening several raw products on site. Compost that is screened will be needed for plant bedding and for future plantings. The resulting mulch that we produce is unique. Our grinder has a one inch screen that produces fine mulch that is very conducive for weed control and anaerobic decomposition. All compost has to be screened and mixed in order to produce a proper topsoil mix. We will not be marketing the off farm generated organic matter until it is processed on our farm operation into mulch or topsoil. It is the resultant mulch which will be marketed consistently with Section 301(16) of the Agriculture and Markets Law.

Composting, grinding and screening of topsoil must be done in large quantities in order for it to be cost effective for the farm. As a result, we will have agricultural by-products that are produced on the farm and agricultural waste at the farm operation. Such by-products will need to be marketed in order to accommodate the farm operation on the premises and to manage this agricultural commodity. Composting and mulching for this farm operation requires the products to be maintained at a temperature suitable for composting. In order to do so, this operational by-product cannot sit for a long period of time or it will be rendered valueless. Again, the off farm generated organic matter will not be marketed as mulch or topsoil until it is agriculturally processed, mixed and/or handled as part of our farm operation.

Exhibit C p12

I hope this letter helps to clarify the intended use of the property. I believe that this intended use is permitted by right in the A-4 Zoning District under the Town of Hurley Zoning Law. Current delays have already resulted in the possible loss on next year's season for our farm operation. Therefore, I am formally requesting that you rescind the relevant portion of your September 4, 2014 Interpretation consistent with this request, due to the fact that there may have been a miscommunication on the intended agricultural use of the property.

Sincerely yours,

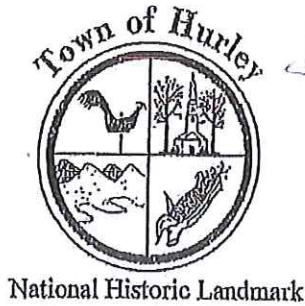


---

ANDREW ZELL



Town of Hurley  
PO Box 569  
Hurley, New York 12443  
845-331-7474 Ext. 4  
Fax 845-331-0058



*Exhibit C*  
*P13*

Glenn Hoffstatter  
Code Enforcement Officer  
Building Inspector  
MS4 Stormwater Officer  
building@townofhurley.org

Mr. Andrew Zell  
PO Box 97  
Hurley, New York 12443

September 18, 2014

RE: Request for interpretation

Dear Mr. Zell

Thank you for your letter dated September 15, 2014 clarifying the proposed use and processes involved in regards to your request for interpretation of planned agricultural uses described in the August 19 2014 letter I received from Mr. Moriello.

Upon reviewing your letter, my interpretation has not changed from the interpretation of the letter received from Mr. Moriello. It is still my opinion that on-farm processing, mixing or handling of off-farm generated organic matter to be partially used on-farm and partially used off-farm, or sold is not in conformance with New York States Agriculture and Markets Law, Article 25AA section 301 (16).

With the proposed use not in conformance with section 301 (16) it is my interpretation that the use is not a farm operation as defined in section 210-5 (Terms Defined) of the Code of the Town of Hurley or section 301 (11) of the agriculture and markets Law.

With the use as proposed it is my determination that it is not an agricultural use but a retail or wholesale use and is not an allowable use in the A-4 District.

Sincerely,

  
Glenn Hoffstatter

Town of Hurley  
P.O. Box 569  
Hurley, New York 12443



*Exhibit C P 14*

Zoning Board of Appeals  
Tel: 845-331-7474 ext. 337  
Fax: 845-331-0058  
e-mail: zoning@townofhurley.org

National Historic Landmark

Andrew Zell  
P.O. Box 97  
Hurley, N.Y. 12443  
November, 14, 2014

Dear Mr Zell:

Please be advised your petition whether the interpretation, based upon the appeal of C.E.O. Hoffstatter, of your proposed use of property at 90 Dug Hill Road, Hurley, N.Y. falls within the definition of farm operation pursuant to New York Agriculture and Market Law and within Town of Hurley Zoning Law was considered by the Town of Hurley Zoning Board of Appeals at your public hearing on November 13, 2014. The board voted to approve your appeal.

Sincerely,

A handwritten signature in cursive script that reads "Doris J. Alden".

Doris J. Alden  
Secretary, Z.B.A.

cc: Hurley Planning Board  
C.E.O. Hoffstatter  
Hurley Town clerk  
Attorney Michael Moriello

CO. 0.070003 1001 0000  
NOV 14 2014  
TOWN OF HURLEY