

**LAW OFFICE OF  
MICHAEL A. MORIELLO, P.C.**

Michael A. Moriello, Esq.

111 Green Street  
Post Office Box 4465  
Kingston, New York 12402  
E-Mail: [mike@moriellolaw.com](mailto:mike@moriellolaw.com)

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

February 8, 2024

Town of Hurley Zoning Board of Appeals  
Mr. Joshua Vogt, Chairman  
PO Box 569  
Hurley, New York 12443

RE: Appeal of the Dave T. Douglas Trust: Town of Hurley  
Zoning Board of Appeals/SEQRA Type II Action [6 NYCRR Part  
617.5(c)(25)] .

Dear Chairman Vogt and Board Members:

On behalf of Hurley Mountain Farms, LLC, Andrew Zell and Lee Winne, this submittal is offered in further address of the documentation forward to the Town of Hurley Zoning Board of Appeals [hereinafter, "ZBA"] by the Dave T. Douglas Trust [hereinafter, "Petitioner"], same in connection with the above referenced "Appeal".

The claims made by the Petitioner are generalized, speculative and conclusory with respect to the lawful agricultural use of the premises at issue.

Moreover, said claims are completely inaccurate under the relevant provisions of the New York State Agriculture & Markets Law, the Town of Hurley Zoning Law, and by operation of the November 14, 2014 Decision of the ZBA in this matter.

Finally, the allegations aforesaid are procedurally infirm as a matter of law and the same are being pursued in violation of controlling substantive law.

Your writer does not intend to re-examine the comprehensive record made before the ZBA over nine (9) years ago. The written 2014 record has been introduced to the ZBA in this proceeding and no matter how hard the Petitioner tries to reconstitute the facts and controlling law, the same are wholly in favor of the Respondents herein.

Accordingly, the following legal analysis is offered for consideration by the ZBA.

1.) Statute of Limitations on Appeal

It is submitted that the Appellant is barred by the applicable statute of limitations from forwarding the Appeal before the ZBA.

Section 267-a(5)(b) of the Town Law of New York State reads as follows:

"An appeal shall be taken within sixty days after the filing of any order, requirement, decision, interpretation or determination of the administrative official, by filing with such administrative official and with the board of appeals a notice of appeal, specifying the grounds thereof and the relief sought. The administrative official from whom the appeal is taken shall forthwith transmit to the board of appeals all the papers constituting the record upon which the action appealed was taken."

Section 210-60(A) of the Zoning Law of the Town of Hurley reads in its entirety as follows:

"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."

The legality of the "farm operation" use under the Town of Hurley Zoning Law was made in 2014 by the ZBA. As such, the Petitioner claims that my client is not engaged in a farm operation is time barred by the sixty (60) day statute of limitations. Iacone v. Building Department of Oyster Bay Cove Village, 32 AD3d (2006); Spandorf v. Building Inspector of Incorporated Village of East Hills, 193 AD2d 882 (1993); Cave v. Zoning Board of Appeals of the Village of Fredonia, 49 AD2d 228 (1975), lv. den. 38 NY2d 710 (1976).

2.) Jurisdiction to Hear the Appeal

As the farm operation has been lawfully operating for over nine years and the statute of limitations to challenge the 2014

ZBA Decision is long over, the Petitioner is actually attempting to conduct an end around with respect to what is actually to be regulated as a lawful farm operation under the Building Code of the Town of Hurley. In this regard, it is not only too late to challenge the farm operation use classification and attendant zoning law legitimacy; the Town of Hurley Zoning Law is not the subject matter of the enforcement, nor of this Appeal.

Section 267-a(4) of the Town Law of New York State is restricted to review of determinations made pursuant to a town's zoning law and said statute reads as follows:

"Hearing appeals. Unless otherwise provided by local law or ordinance, the jurisdiction of the board of appeals shall be appellate only and shall be limited to hearing and deciding appeals from and reviewing any order, requirement, decision, interpretation, or determination made by the administrative official charged with the enforcement of any ordinance or local law adopted pursuant to this article. Such appeal may be taken by any person aggrieved, or by an officer, department, board or bureau of the town."

Accordingly, the ZBA does not possess appellate authority to hear and determine issues related to the enforcement of Town of Hurley Building Code, as intimated by the Petitioner. Coco v. City of Rochester Zoning Board of Appeals, 236 AD2d 826 (1997); Shank v. Town of Dryden, 195 AD2d 858 (3<sup>rd</sup> Dept, 1993); RSM West Lake Road, LLC v. Town of Canandaigua Zoning Board of Appeals, 55 AD3d 1222 (2008).

Based upon the foregoing, the Building Code of the Town of Hurley is not relevant to any purported Appeal, as said Building Code provisions are jurisdictionally prohibited from consideration by the ZBA under controlling New York State Law. Rosenstein v. Curran, 21 AD2d 802 (1964), Gardner v. Phillips, 59 Misc 2d 934 (1969).

### 3.) Vested Rights/Administrative Res Judicata

In order to obtain vested rights for completion of project improvements, a property owner must be capable of demonstrating that in reliance upon an approval validly granted, and in good faith, said property owner (1) made a substantial change in position in reliance upon the approval; (2) made substantial expenditures; or (3) incurred substantial obligations. Ellington Construction Corp. v. Zoning Board of Appeals, 77 NY2d 114

(1990); Glacial Aggregates, LLC v. Town of Yorkshire, 14 NY3d 127 (2010); Fraydun Enters v. Deutsch, 478 NYS2d 477 (1984).

In the instant matter, my client has clearly met the vested rights standard, inasmuch as the permitted farm operation is lawfully proceeding under a validly issued ZBA Approval under the Town of Hurley Zoning Law.

Acting in concert with the Ellington case is the, "single integrated project doctrine" which operates to preserve vested rights for an approved project, notwithstanding that the entire use of related infrastructure has not yet occurred. Schoonmaker Homes - John Steinberg, Inc. v. Village of Maybrook, 178 AD2d 722 (1991), app. den. 79 NY2d 757 (1992) (3<sup>rd</sup> Dept.); Putnum Armonk, Inc. v. Town of Southeast, 52 AD2d 10 (1976); RC Enterprises v. Town of Patterson, 42 AD3d 542 (2007).

It is submitted that my client possesses vested rights to the farm operation and ex post facto application of non-applicable zoning law commercial use requirements by the Petitioner is further prohibited under the principles of administrative res judicata. Kennedy v. Zoning Board of Appeals of Hastings-on Hudson, 145 AD2d 490 (1988); EFS Ventures v. Foster, 71 NY2d 359 (1988).

Administrative res judicata bars a party from revisiting issues, or seeking relief, which could have been determined in prior deliberations by an administrative agency and/or official. Jensen v. Zoning Board of Appeals of the Village of Old Westbury, 130 AD2d 549 (1987), lv. den. 70 NY2d 611 (1987); Waylonis vs. Baum, 281 AD2d 636 (2001).

In this instance, the Code Enforcement Officer was authorized at law to determine the agricultural status of the farm operation and said determination was properly reversed by the ZBA, with my client reasonably relying thereupon. Therefore, as the farm operation has been duly established and continued since 2014, administrative res judicata operates as a conclusive bar to subsequent adjudication at the administrative level. Jones v. Young, 257 AD 563 (3<sup>rd</sup> Dept, 1939); Goodkind v. WFS Investors Corp, 192 AD2d 694 (1993).

Although estoppel is normally not applicable to assert against municipal authorities, Parkview Associates v. City of New York, 71 NY2d 274 (1988), it may be successfully invoked when the entity sought to be so regulated has relied on the applicable law and incurred substantial expenditures in reliance upon the administrative determination, Ninnie v. Gould, 178 AD2d

832 (1991), Lefrak Forest Hills Corp. v. Gould, 178 AD2d 211 (1991), aff'd, 32 NY2d 795 (1992). Therefore, any zoning law redetermination of the administrative official involved would be clearly in error by effecting an unauthorized change in the applicable zoning law. Pokoik v. Silsdorf, 40 NY2d 769 (1976).

4.) The Farm Operation Use is Consistent with the 2014 Approval by the ZBA and is lawful under New York State Law.

As set forth earlier herein, the 2014 record is comprehensive and the uses which the Petitioner is attempting to challenge are wholly lawful under the New York State Agriculture & Markets Law [see my clients' August 19, 2014 Request for Interpretation for a comprehensive analysis of applicable New York State Law; a copy of said document is annexed hereto and made a part hereof as Exhibit "A"].

Clearly the employment of "top soil, mulch, compost [screening and grinding] and associated accessory uses" are permitted as right within the A-4 Zoning District. This was the exact question presented on Appeal in 2014. [See Exhibit "A".]

In fact, my client submitted a September 15, 2014 correspondence to the Town of Hurley Building Inspector, which was duly considered on Appeal by the ZBA wherein he detailed the exact operations presently occurring at the premises [a copy of this correspondence is annexed hereto and made a part hereof as Exhibit "B"].

In 2014 my client referenced the following agricultural activities at the premises:

- i) "grinding and screening"
- ii) "composting"
- iii) "mulch processing"
- iv) "Agricultural by-products"
- v) "Agricultural waste"
- vi) "Screening"
- vii) "Composting, grinding and screening of topsoil in large quantities"

Clearly, the ZBA and the then Code Enforcement Officer examined all of the foregoing agricultural activities under my clients' 2014 Appeal; with specific reference to all agricultural activities permitted pursuant to the following statutory authority:

- a) "New York State Agriculture and Markets Law, Article 25 AA, Section 301 (17)" [formerly, Section 301(16)]; and,
- b) "Section 210-5 (Terms Defined) of the Code of the Town of Hurley"; and,
- c) "Section 301(11) of the Agriculture and Markets Law"

[See September 4, 2004 and September 18, 2004 Interpretation by Glenn Hoffstatter, which was reversed on November 14, 2014 by the ZBA; copies of which are annexed hereto and made a part hereof collectively as Exhibit "C".]

Agricultural uses are permitted, "as of right" within the A-4 Zoning District and there is no discretionary permit review associated therewith by virtue of the Town of Hurley Use Regulations, SEQRA [6 NYCRR Parts 617.5(c)(19), as well as Section 305-a(1) of the Agriculture and Markets Law of New York State. Copies of said statutory authority were all duly considered by the ZBA in 2014.

In addition, "compost, mulch or other organic biomass crops" are classified as being part of a "farm operation" and as "agricultural uses" thereon pursuant to Sections 301-a(11) and 301-a(17) [formerly, Section 301(16)] of the Agriculture and Markets Law of New York State. [Copies of said statutes were also duly examined by the ZBA in 2014 and copies of the current statutory authority in both instances are annexed and made a part hereof, collectively, as Exhibit "D."]

Owing to the operation of Sections 305-a(1) of the New York State Agriculture and Markets Law, the State of New York has established a state-wide general statutory scheme for the protection and continued viability of agricultural uses which cannot be superseded by the Town of Hurley under its Zoning Law; much less redetermined nearly 10 years after the fact. Sasso v. Osgood, 86 NY2d 375 (1995); Albany Area Builders Association v. Town of Guilderland, 74 NY2d 372 (1989).

My client is currently performing agricultural operations exactly as described, entirely consonant with New York State Agriculture and Markets Law provisions and precisely as permitted by the ZBA in 2014. In this regard, the Town of Hurley has recently inspected the premises five (5) times and concluded, correctly, that Petitioner's complaint was "not deemed valid". [A copy of the December 5, 2023 Determination is annexed hereto and made a part hereof as Exhibit "E"].

5.) Caveat Emptor

It is a known town-wide fact that the Petitioner spent a bundle of money to purchase the former McKinnon premises. However, this does not give the Petitioner the right to control my clients' permitted use of its lands, nor does it give Petitioner the right to use his considerable resources to attempt to "break a butterfly on a wheel."<sup>1</sup>

Unmistakably, if the Petitioner is upset with anyone, it should be with his real estate broker, as my clients' use of its lands should have been discovered during the conduct of rudimentary real property due diligence.

Instead, Petitioner is projecting by forwarding a narrative which is decidedly pejorative, completely belied by the facts and wholly at variance with a controlling state-wide agricultural statutory scheme.

6.) Future Proceedings

Both Andrew and Lee are dug in and love their town. Accordingly, both my clients will continue to contribute to the farm community within the Town of Hurley and they have absolutely no intention of acceding to the demands of the Petitioner. Nor will either man countenance being described as having "falsely presented" their agricultural operation in any manner. [See Petitioner's November 20, 2023 Complaint.]

Parenthetically, the ZBA is hereby made aware of the fact that my clients met with the Petitioner and acted in good faith, as neighbors, for months. Petitioner's Complaint and Appeal results from the Petitioner's own unwillingness to resolve differences in the traditional cooperative manner in the Town of Hurley.

Instead, the transparent precursor to Petitioner's inevitable legal proceedings is to subject my clients to legal fees, business interference and administrative confrontation before the ZBA.

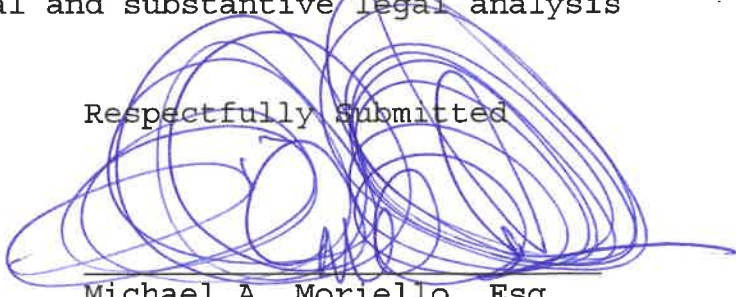
If Mr. Sutherland thinks that, after just arriving in Hurley, he can bully two hard working, life-long members of the Hurley farm community into submission, he is woefully mistaken.

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<sup>1</sup>Pope, Alexander, Epistle to Dr. Arbuthnot (1735).

Wherefore, the Respondents hereby request that the Petition be dismissed upon the procedural and substantive legal analysis herein.

Respectfully Submitted



Michael A. Moriello, Esq.

MAM:bak

Enclosure

cc: Andrew Zell  
Lee Winne  
Paul Economos  
Maggie Colan  
[all via e-mail]



EXHIBIT "A"

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

Richard F. Riseley  
Michael A. Moriello

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

August 19, 2014

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

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

Dear Glenn:

In accordance with our conversation, I am submitting this Request for Interpretation on behalf of my clients Mr. Andrew Zell and Mr. Lee Winne, same in connection with the above referenced matter.

This Request for Interpretation is made pursuant to Section 210-54(A) of the Town of Hurley Zoning Law and Sections 267-a(4) and 267-a(5) of the Town Law of New York State.

Questions Presented: Is an agricultural nursery which will employ top soil, mulch, compost [screening and grinding] and associated accessory uses a permitted as of right agricultural use within the A-4 Zoning District?

Answer: It is submitted that the above question is to be answered in the affirmative, inasmuch as discretionary Site Development Plan and Special Use Permit Approvals are not required, based upon the following legal address.

I. Brief History: My clients are contract vendees for purchase of a 5.9 acre premises situate within the A-4 Zoning District and along Dug Hill Road, said premises being currently zoned in fee by Evan Matthews and Mary Piskoz [Town of Hurley S/B/L #55.002-1-8]. A copy of the current Deed to the subject premises is annexed hereto as Exhibit "A".

Upon purchase of said lands, my clients plan to coordinate the agricultural activities upon said lands with approximately 2 acres of additional lands leased from RO Davenport & Sons, Inc., thereby comprising a total of approximately 8 acres of land.

Access to the subject premises is via existing farm land along Dug Hill Road and a copy of the June 2, 2003 survey of the premises as prepared by Donald Brewer, PLS, is annexed hereto as Exhibit "B".

II. Legal Analysis: Agricultural uses are permitted, "as of right" within the A-4 Zoning District and there is no discretionary permit review associated therewith by virtue of the Town of Hurley Use Regulations, SEQRA [6 NYCRR Parts 617.5(c)(19), as well as Section 305-a(1) of the Agriculture and Markets Law of New York State. Copies of said statutory authority are annexed hereto and made a part hereof collectively as Exhibit "C".

In addition, "compost, mulch or other organic biomass crops" are classified as being part of a "farm operation" and as "agricultural uses" thereon pursuant to Sections 301-a(11) and 301-a(16) of the Agriculture and Markets Law of New York State. [Copies of said statutes are annexed hereto and made a part hereof collectively as Exhibit "D".]

Owing to the operation of Sections 305-a(1) of the New York State Agriculture and Markets Law, the State of New York has established a state-wide general statutory scheme for the protection and continued viability of agricultural uses which cannot be superceded by the Town of Hurley under its Zoning Law. Sasso v. Osgood, 86 NY2d 375 (1995), Albany Area Builders Association v. Town of Guilderland, 74 NY2d 372 (1989).

Meaning, once the New York State general state-wide statutory scheme for the regulation of Agriculture is applicable, there is no conference of discretionary review authority upon the Code Enforcement Officer for the ministerial act of determining whether the planned agricultural use, as stated above, is an agricultural use under the Town of Hurley Zoning Law. Incorporated Village of Atlantic Beach v. Gavalas, 81 NY2d 322 (1993), Filmways Communications v. Douglas, 106 AD2d 185 (1985), aff'd 65 NY2d 878 (1985), Plus v. Bletsch, 70 NY2d 920 (1987); see also, 6 NYCRR Part 617.5(c)(19).

It is further submitted that, once a municipality adopts the New York State Building and Fire Code (which is a uniform state regulatory statute), it may not unilaterally impose more restrictive conditions than those set forth within said Code. Con Edison v. Town of Red Hook, 60 NY2d 99 (1983).

Therefore, any attempt to subject my clients to Site Development Plan and/or Special Use Permit review in the instant case would actually be an unauthorized regulation of the details, method and manner of my clients' agricultural business enterprise. St. Onge v. Donovan, 71 NY2d 507 (1988), Dexter v. Town Board, 36 NY2d 102 (1976).

Further addressing the classified agricultural "Farm Operation" in relation to the Town of Hurley Zoning Law, a Zoning Law is in derogation of common law; therefore, the meaning of terms within said law are to be construed in a light most favorable to the applicant/landowner, and against the municipal authority. 440 East 102<sup>nd</sup> Street Corp. v. Murdock, 285 NY 298 (1941), Thompson Industries v. Incorporated Village of Port Washington North, 27 NY2d 537 (1970).

Therefore, zoning restrictions are not to be extended by implication to prohibit a use and will be limited to what is clearly proscribed. Offshore Restaurant Corp. v. Linden, 30 NY2d 160 (1972), Kurlander v. Incorporated Village of Hempstead, 31 Misc2d 121 (1961), Ansonia Associates v. Continental Ansonia Garage Corporation, 132 Misc2d 731 (1986).

With respect to all of the above stated statutory constricts, it is noted that the terms "agriculture" and "farming" are not defined under the Town of Hurley Zoning Law. Accordingly, the New York State legislative language set further within Section 301 of the Agriculture and Markets Law clearly authorizes the issuance of building permits for all agricultural uses which meet the use requirements of Section 210-10 of the Town of Hurley Zoning Law. In this manner, plain and unambiguous statutory language must be followed in order to construe the meaning of a statute. Catholic Charities v. Zoning Board of Appeals of the City of Norwich, 187 AD2d 903 (3<sup>rd</sup> Dept, 1992).

Even assuming arguendo, that the meaning of the Town of Hurley Zoning Law is somehow unclear, a long line of Third Department cases holds that any ambiguity, doubt, or apparent conflict involving regulatory terms or meaning must be resolved in favor of the applicant/landowner. Hess Realty Corp. v. Planning Commission, 198 Ad2d 588 (3<sup>rd</sup> Dept, 1993), Freihofer v. Lake George Town Board, 147 AD2d 865 (3<sup>rd</sup> Dept, 1989), Bonded Concrete, Inc. v. Zoning Board of Appeals of the Town of Saugerties, 268 AD2d 771 (3<sup>rd</sup> Dept, 2000), lv. den. 94 NY2d 704 (2000).

### III. SEQRA Exemption:

Agricultural uses are exempt from SEQRA review and classified as Type II Actions thereunder. In this regard, the agricultural use at issue is not subject to environmental review as it is a Type II Action pursuant to 6 NYCRR Part 617.5(c)(3). Accordingly, this action qualifies as a Type II Action under SEQRA pursuant to the following regulatory authority:

1. 6 NYCRR Part 617.5(c)(3), as an agricultural farm management practice which includes the construction, maintenance and repair of farm buildings and structures, and land use changes consistent with generally accepted principles of farming; and,

2. 6 NYCRR Part 617.5(c)(19), regarding the ministerial issuance of Building Permits.

A review of the applicable case law reveals that a plethora of agricultural activities have been judicially determined to be classified as Type II under SEQRA. These agricultural activities have been historically extended to construction of manure management farm buildings and utilization of mobile homes for farm labor housing. See generally, Lysander v. Hafner, 96 NY2d 558 (2001), Pure Air and Water, Inc. v. Davidsen, 246 AD2d 786 (3<sup>rd</sup> Dept, 1998), app. dismd., 91 NY2d 955 (1999), app. den. 92 NY2d 807 (1999), app. dismd., 93 NY2d 1013, Humane

Society of United States v. Empire State Development Corporation, 53 AD3d 1013 (2008).

Moreover, in the event that any opponent of my clients' plans were to attempt to assert that discretionary review is applicable in the instant case, the same would be further pre-empted and superceded by the New York State Department of Agriculture and Markets state wide statutory scheme; whether the farm operation is included within the Agricultural District or not. Village of Lacona v. New York State Department of Agriculture and Markets, 51 AD3d 1319 (3<sup>rd</sup> Dept, 2008).

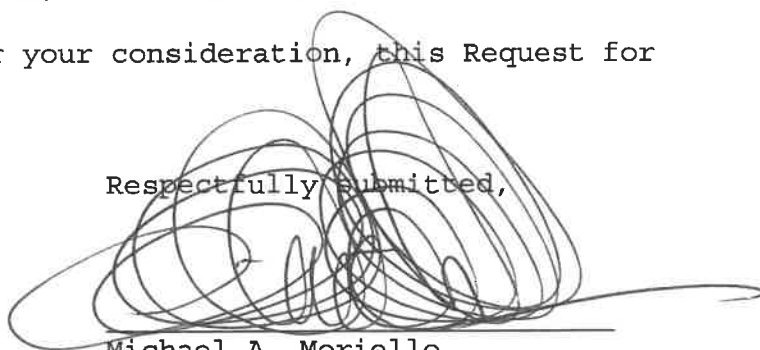
Finally, I note that pursuant to SEQRA [6 NYCRR Part 617.5(c)(31), this Request for Interpretation is classified as a Type II Action thereunder and is thereby precluded from environmental review by the Town of Hurley Zoning Board of Appeals. Frampton v. Zoning Board of Appeals of the Town of Lloyd, 114 AD2d 671 (3<sup>rd</sup> Dept, 1985).

IV. Conclusion: Based upon all of the above, it is submitted that the planned agricultural uses of my clients are not to be regulated pursuant to Site Development Plan and/or Special Use Permit discretionary review under the Town of Hurley Zoning Law. Accordingly, based upon the facts and law set forth above, it is respectfully requested that the Town of Hurley Building Inspector provide an Interpretation which agrees with the foregoing address.

Should you have any questions, do not hesitate to contact me.

Thanking you in advance for your consideration, this Request for Interpretation is,

Respectfully submitted,

A large, dense, and somewhat chaotic handwritten signature in black ink, appearing to be 'Michael A. Moriello'. The signature is written over the typed name and extends to the right.

Michael A. Moriello

MAM:def  
Enclosures  
cc: Messrs. Zell and Winne  
Christopher Coleman, Esq.

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

Richard F. Riseley  
Michael A. Moriello

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

September 24, 2014

Town of Hurley Zoning Board of Appeals  
Matthew Jankowski, Esq., Chairman  
Town Hall  
10 Wamsley Place  
PO Box 569  
Hurley, New York 12443

RE: In the Matter of the Appeal of Andrew Zell

Dear Chairman Jankowski and Board Members:

This Appeal is submitted by Mr. Andrew Zell [hereinafter the "Petitioner"] in response to certain September 4, 2014 and September 18, 2014 Interpretations as issued by the Town of Hurley Building Inspector with respect to Petitioner's proposed use of the Mathews/Piskoz premises for an agricultural nursery.

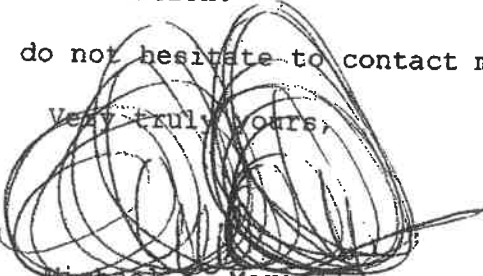
The statutory authority by which this Appeal arises is set forth within Sections 267-a(4) and 267-a(5) of the Town Law of New York State, as well as Article IX of the Town of Hurley Zoning Law.

In connection with the foregoing, you will find the following documents for your review:

- 1.) Application Fee/Application Form.
- 2.) August 19, 2014 Request for Interpretation.
- 3.) September 4, 2014 Interpretation.
- 4.) September 15, 2014 correspondence by Andrew Zell.
- 5.) September 18, 2014 Interpretation.
- 6.) Michael A. Moriello, Esq. Supplement to Appeal.
- 7.) Michael A. Moriello, Esq. September 24, 2014 correspondence.

Please place this matter on the Town of Hurley Zoning Board of Appeals October 9, 2014 Agenda for consideration.

Should you have any questions, do not hesitate to contact me.

Very truly yours,  
  
Michael A. Moriello

MAM:def  
Enclosures  
cc: Mr. Andrew Zell  
Town of Hurley Building Inspector  
Town of Hurley Town Board

# TOWN OF HURLEY ZONING BOARD OF APPEALS APPLICATION

Date: September 22, 2014

Owner: Evan Matthews and Mary Piskoz

Address: 90 Dug Hill Road  
Hurley, New York 12443

Section, Block & Lot: 55.002-1-8

Phone: N/A Cell Phone: N/A

Name of Applicant (if other than owner): Andrew Zell

Phone Number: (845) 338-6603

### APPLICATION IS MADE FOR:

Area Variance  Use Variance  Interpretation  Appeal

**Description of request:**

Appeal of the Town of Hurley Building Inspector's September 4, 2014 and September 18, 2014 Interpretations based upon the August 19, 2014 Request for Interpretation of Andrew Zell (see documents annexed hereto collectively).

Location of affected premises: Dug Hill Road, Hurley, New York

Size of lot: Front 500' Rear 389' Depth 920' Area 5.924 Acres

Present use of property: (i.e. residential, single family w/garage, etc):  
Vacant land.

Requested use of property:  
Agricultural

- Attach a scaled drawing of property showing building locations, physical characteristics and measurements from buildings to property lines (both proposed & existing)
- Provide a detailed description of the factors which should be considered by the ZBA in reviewing this request. If the request is an area variance, you may consult the list of criteria which is provided with this application form.
- Attach appropriate fee payable to the Town Clerk - \$100 (appeals) \$ 50 (variance)
- Send original and two copies of this form and all attachments to the Zoning Enforcement Officer.
- Applicant must contact ZBA Secretary at 338-2565 to confirm placement on agenda.

**RISELEY & MORIELLO**

**ATTORNEYS AT LAW**

**111 Green Street**

**Post Office Box 4465**

**Kingston, New York 12402**

**E-Mail: mamrfr@aol.com**

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August 19, 2014

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

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Andrew Zell and Lee Winne: Request for Interpretation

Dear Glenn:

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This Request for Interpretation is made pursuant to Section 210-54(A) of the Town of Hurley Zoning Law and Sections 267-a(4) and 267-a(5) of the Town Law of New York State.

Questions Presented: Is an agricultural nursery which will employ top soil, mulch, compost [screening and grinding] and associated accessory uses a permitted as of right agricultural use within the A-4 Zoning District?

Answer: It is submitted that the above question is to be answered in the affirmative, inasmuch as discretionary Site Development Plan and Special Use Permit Approvals are not required, based upon the following legal address.

I. Brief History: My clients are contract vendees for purchase of a 5.9 acre premises situate within the A-4 Zoning District and along Dug Hill Road, said premises being currently zoned in fee by Evan Matthews and Mary Piskoz [Town of Hurley S/B/L #55.002-1-8]. A copy of the current Deed to the subject premises is annexed hereto as Exhibit "A".

Upon purchase of said lands, my clients plan to coordinate the agricultural activities upon said lands with approximately 2 acres of additional lands leased from RO Davenport & Sons, Inc., thereby comprising a total of approximately 8 acres of land.

Access to the subject premises is via existing farm land along Dug Hill Road and a copy of the June 2, 2003 survey of the premises as prepared by Donald Brewer, PLS, is annexed hereto as Exhibit "B".

II. Legal Analysis: Agricultural uses are permitted, "as of right" within the A-4 Zoning District and there is no discretionary permit review associated therewith by virtue of the Town of Hurley Use Regulations, SEQRA [6 NYCRR Parts 617.5(c)(19), as well as Section 305-a(1) of the Agriculture and Markets Law of New York State. Copies of said statutory authority are annexed hereto and made a part hereof collectively as Exhibit "C".

In addition, "compost, mulch or other organic biomass crops" are classified as being part of a "farm operation" and as "agricultural uses" thereon pursuant to Sections 301-a(11) and 301-a(16) of the Agriculture and Markets Law of New York State. [Copies of said statutes are annexed hereto and made a part hereof collectively as Exhibit "D".]

Owing to the operation of Sections 305-a(1) of the New York State Agriculture and Markets Law, the State of New York has established a state-wide general statutory scheme for the protection and continued viability of agricultural uses which cannot be superceded by the Town of Hurley under its Zoning Law. Sasso v. Osgood, 86 NY2d 375 (1995), Albany Area Builders Association v. Town of Guilderland, 74 NY2d 372 (1989).

Meaning, once the New York State general state-wide statutory scheme for the regulation of Agriculture is applicable, there is no conference of discretionary review authority upon the Code Enforcement Officer for the ministerial act of determining whether the planned agricultural use, as stated above, is an agricultural use under the Town of Hurley Zoning Law. Incorporated Village of Atlantic Beach v. Gavalas, 81 NY2d 322 (1993), Filmways Communications v. Douglas, 106 AD2d 185 (1985), aff'd 65 NY2d 878 (1985), Plus v. Bletsch, 70 NY2d 920 (1987); see also, 6 NYCRR Part 617.5(c)(19).

It is further submitted that, once a municipality adopts the New York State Building and Fire Code (which is a uniform state regulatory statute), it may not unilaterally impose more restrictive conditions than those set forth within said Code. Con Edison v. Town of Red Hook, 60 NY2d 99 (1983).

Therefore, any attempt to subject my clients to Site Development Plan and/or Special Use Permit review in the instant case would actually be an unauthorized regulation of the details, method and manner of my clients' agricultural business enterprise. St. Onge v. Donovan, 71 NY2d 507 (1988), Dexter v. Town Board, 36 NY2d 102 (1976).

Further addressing the classified agricultural "Farm Operation" in relation to the Town of Hurley Zoning Law, a Zoning Law is in derogation of common law; therefore, the meaning of terms within said law are to be construed in a light most favorable to the applicant/landowner, and against the municipal authority. 440 East 102<sup>nd</sup> Street Corp. v. Murdock, 285 NY 298 (1941), Thompson Industries v. Incorporated Village of Port Washington North, 27 NY2d 537 (1970).



Therefore, zoning restrictions are not to be extended by implication to prohibit a use and will be limited to what is clearly proscribed. Offshore Restaurant Corp. v. Linden, 30 NY2d 160 (1972), Kurlander v. Incorporated Village of Hempstead, 31 Misc2d 121 (1961), Ansonia Associates v. Continental Ansonia Garage Corporation, 132 Misc2d 731 (1986).

With respect to all of the above stated statutory constricts, it is noted that the terms "agriculture" and "farming" are not defined under the Town of Hurley Zoning Law. Accordingly, the New York State legislative language set further within Section 301 of the Agriculture and Markets Law clearly authorizes the issuance of building permits for all agricultural uses which meet the use requirements of Section 210-10 of the Town of Hurley Zoning Law. In this manner, plain and unambiguous statutory language must be followed in order to construe the meaning of a statute. Catholic Charities v. Zoning Board of Appeals of the City of Norwich, 187 AD2d 903 (3<sup>rd</sup> Dept, 1992).

Even assuming arguendo, that the meaning of the Town of Hurley Zoning Law is somehow unclear, a long line of Third Department cases holds that any ambiguity, doubt, or apparent conflict involving regulatory terms or meaning must be resolved in favor of the applicant/landowner. Hess Realty Corp. v. Planning Commission, 198 Ad2d 588 (3<sup>rd</sup> Dept, 1993), Freihofer v. Lake George Town Board, 147 AD2d 865 (3<sup>rd</sup> Dept, 1989), Bonded Concrete, Inc. v. Zoning Board of Appeals of the Town of Saugerties, 268 AD2d 771 (3<sup>rd</sup> Dept, 2000), lv. den. 94 NY2d 704 (2000).

III. SEQRA Exemption:

Agricultural uses are exempt from SEQRA review and classified as Type II Actions thereunder. In this regard, the agricultural use at issue is not subject to environmental review as it is a Type II Action pursuant to 6 NYCRR Part 617.5(c)(3). Accordingly, this action qualifies as a Type II Action under SEQRA pursuant to the following regulatory authority:

1. 6 NYCRR Part 617.5(c)(3), as an agricultural farm management practice which includes the construction, maintenance and repair of farm buildings and structures, and land use changes consistent with generally accepted principles of farming; and,
2. 6 NYCRR Part 617.5(c)(19), regarding the ministerial issuance of Building Permits.

A review of the applicable case law reveals that a plethora of agricultural activities have been judicially determined to be classified as Type II under SEQRA. These agricultural activities have been historically extended to construction of manure management farm buildings and utilization of mobile homes for farm labor housing. See generally, Lysander v. Hafner, 96 NY2d 558 (2001), Pure Air and Water, Inc. v. Davidsen, 246 AD2d 786 (3<sup>rd</sup> Dept, 1998), app. dismd., 91 NY2d 955 (1999), app. den. 92 NY2d 807 (1999), app. dismd., 93 NY2d 1013, Humane

Society of United States v. Empire State Development Corporation, 53 AD3d 1013 (2008).

Moreover, in the event that any opponent of my clients' plans were to attempt to assert that discretionary review is applicable in the instant case, the same would be further pre-empted and superceded by the New York State Department of Agriculture and Markets state wide statutory scheme; whether the farm operation is included within the Agricultural District or not. Village of Lacona v. New York State Department of Agriculture and Markets, 51 AD3d 1319 (3<sup>rd</sup> Dept, 2008).

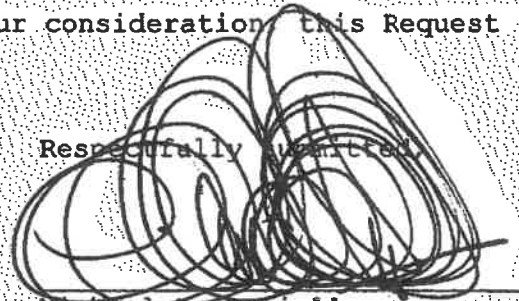
Finally, I note that pursuant to SEQRA [6 NYCRR Part 617.5(c) (31), this Request for Interpretation is classified as a Type II Action thereunder and is thereby precluded from environmental review by the Town of Hurley Zoning Board of Appeals. Frampton v. Zoning Board of Appeals of the Town of Lloyd, 114 AD2d 671 (3<sup>rd</sup> Dept, 1985).

IV. Conclusion: Based upon all of the above, it is submitted that the planned agricultural uses of my clients are not to be regulated pursuant to Site Development Plan and/or Special Use Permit discretionary review under the Town of Hurley Zoning Law. Accordingly, based upon the facts and law set forth above, it is respectfully requested that the Town of Hurley Building Inspector provide an Interpretation which agrees with the foregoing address.

Should you have any questions, do not hesitate to contact me.

Thanking you in advance for your consideration, this Request for Interpretation is,

Respectfully submitted,



Michael A. Moriello

MAM:def  
Enclosures  
cc: Messrs. Zell and Winne  
Christopher Coleman, Esq.

EXHIBIT "A"

Ulster County  
Albert Spada  
County Clerk



Instrument Number: 2003- 00009306

Recorded On: April 07, 2003

As  
D01 - Deed

Parties: MACKINNON ROBERT A BY ATTY  
To  
MATTHEWS EVAN T

Recorded By: TSC

Comment: HURLEY

Billable Pages: 6

Num Of Pages: 6

\*\* Examined and Charged as Follows: \*\*

DD1 - Deed	43.00	RP5217	25.00	Tax Affidavit TP 584	5.00
Recording Charge:	73.00				
	Amount	Consideration Amount	RS#/CS#	Basic	0.00
Tax-Transfer	100.00	25,000.00	4965	Additional	0.00
				Special Additional	0.00
				Transfer	100.00
Tax Charge:	100.00				

\*\* THIS PAGE IS PART OF THE INSTRUMENT \*\*

I hereby certify that the within and foregoing was recorded in the Clerk's Office For: Ulster County,

File Information:

Document Number: 2003- 00009306  
Receipt Number: 30339  
Recorded Date/Time: April 07, 2003 04:26P  
Book-Vol/Pg: Bk-D VI-3567 Pg-252

Record and Return To:

MATTHEW & GRIECO  
PO BOX 3127  
KINGSTON NY 12402



*Albert Spada*

ALBERT SPADA, ULSTER COUNTY CLERK

*6  
max*

**BARGAIN AND SALE DEED WITH COVENANT AGAINST GRANTOR  
(INDIVIDUAL)**

**STATUTORY FORM C**

**THIS IS A LEGALLY BINDING INSTRUMENT. IF NOT FULLY UNDERSTOOD, WE RECOMMEND ALL PARTIES TO THE INSTRUMENT CONSULT AN ATTORNEY BEFORE SIGNING.**

**THIS INDENTURE**, made the APRIL 7 2003,

between

ROBERT A. MacKINNON, BY LAURINDA MAC KINNON HIS ATTORNEY IN FACT of 3181 NORTH MADERA MESA PLACE, TUCSON, Arizona 85749,

party of the first part, and

<sup>T.</sup> EVAN MATTHEWS, of 8 DUG HILL RD HURLEY, New York 12443,

MARY A PISKOZ AS JOINT TENANTS  
party of the second part:

**WITNESSETH**, that the party of the first part, in consideration of one dollar and other good and valuable consideration, lawful money of the United States, paid by the party of the second part, does hereby grant and release unto the party of the second part, HIS HEIRS and assigns forever, all that certain piece and parcel of land situate in TOWN OF HURLEY, ULSTER COUNTY, NEW YORK, and more particularly described in Schedule A attached hereto

together with the appurtenances and all the estate and rights of the party of the first part in and to said premises.

**TO HAVE AND TO HOLD** the premises herein granted unto the party of the second part, HIS HEIRS and assigns forever. And the party of the first part covenants that he has not done or suffered anything whereby the said premises have been encumbered in any way whatever.

And the party of the first part/grantor, in compliance with Section 13 of the Lien Law, covenants that the party of the first part/grantor will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose. The word "party" or "grantor" shall be construed as if it read "parties" or "grantors" whenever the sense of this document so requires.

**IN WITNESS WHEREOF**, the party of the first part has hereunto set his hand and seal the day and year first above written.

*Robert A. MacKinnon by Laurinda MacKinnon*  
Seller Robert A. MacKinnon by  
Laurinda MacKinnon Attorney-in-Fact *Attorney-in-Fact*

CHECKED DL  
ENTERED BH  
MARK/OFF \_\_\_\_\_

*VTSL*

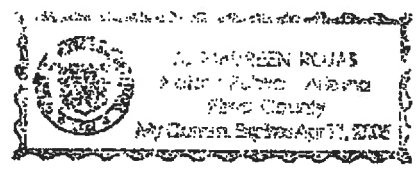
Acknowledgment by a Person Outside New York State (RPL § 309-b)

STATE OF ARIZONA )  
COUNTY OF PIMA ) ss.:  
)

On the 1<sup>st</sup> th day of April, 2003, before me, the undersigned, personally appeared LAURINDA MacKINNON personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that she executed the same in her capacity(ies), and that by her signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument, and that such individual(s) made such appearance before the undersigned in TUCSON, ARIZONA.

[Signature]  
(signature and office of individual taking acknowledgment)

SUBSCRIBED AND SWORN TO BEFORE ME  
THIS 1<sup>st</sup> DAY OF April, 2003.  
BY Laurinda MacKinnon  
[Signature]  
NOTARY PUBLIC



**DEED**

**Title No.**

**Section 55.2**

**Block 1**

**Lot 8**

**ROBERT A. MacKINNON BY  
LAURINDA MacKINNON**

**County or Town HURLEY, ULSTER COUNTY**

**To**

**Street Address**

**EVAN MATTHEWS**

**HURLEY, New York 12443**

**Return By Mail To:**

**S. JAMES MATTHEWS, ESQ.**

**MATTHEWS & GRIECO**

**89 JOHN STREET**

**PO BOX 3127**

**KINGSTON, NEW YORK 12402**

**Reserve This Space For Use Of Recording Office**

[Empty rectangular box for recording office use]

ALL THAT PIECE OR PARCEL of land situate in the Town of Hurley, County of Ulster and State of New York described as follows:

Beginning at a spike set at the center of Dug Hill Road being North 74°31'26" West along the center of the road 34.96 feet from the center of a metal culvert (36" dia.) and being North 17°19'54" East 25.01 feet from a set reinforcement rod; thence from said POINT AND PLACE OF BEGINNING, along lands now or formerly Beverly J. Daley (L.1770 p.261) as per a boundary line agreement (L.1301 p.306) the following twenty five courses and distances:

- South 17°19'54" West 67.00 feet
- North 59°52'14" East 16.98 feet
- South 47°29'16" East 36.17 feet
- South 17°14'54" West 54.74 feet
- South 32°05'36" East 14.17 feet
- South 74°56'16" East 17.43 feet
- South 59°44'26" East 35.19 feet
- South 01°07'36" East 29.69 feet
- South 31°53'26" East 8.97 feet
- South 55°33'36" East 34.34 feet
- South 23°47'56" East 33.66 feet
- South 14°48'36" East 55.01 feet
- South 59°35'06" East 51.03 feet
- South 36°33'46" East 29.89 feet
- South 15°40'54" West 27.62 feet
- South 10°20'26" East 21.03 feet
- South 62°08'04" West 15.97 feet
- South 48°39'24" West 47.01 feet
- South 39°30'34" West 48.10 feet
- South 53°52'44" West 14.97 feet
- South 22°35'24" West 12.04 feet
- South 07°47'04" West 18.17 feet
- South 05°35'36" East 49.49 feet

South 07°07'54" West 14.97 feet

South 82°58'48" East 41.28 feet to a point in the centerline of Hurley Mountain Road; thence along the centerline of Hurley Mountain Road South 23°27'52" West 78.19 feet to a point being South 72°16'18" East 25.13 feet from a found iron bar; thence along lands now or formerly Gregg and Roslyn Mazzilli (L.3122, p. 207), generally along a wood rail fence, North 72°16'18" West 389.05 feet to a found reinforcement rod on the east bounds of lands of New York State (Project/Map No.3159); thence along the east bounds of New York State, North 17°34'23" West generally along a wire fence 119.87 feet, to a found stone monument; thence North 03°06'52" East generally along a wire fence 582.87 feet, to a found stone monument; thence North 10°26'52" East along said lands of New York State 202.62 feet to a spike set in the center of Dug Hill Road; thence along said center of Dug Hill Road the five courses and distances:

South 05°18'33" East 188.14 feet

South 19°42'44" East 53.71 feet

South 34°11'51" East 33.65 feet

South 54°50'26" East 41.62 feet

South 67°18'35" East 170.13 feet to the POINT AND PLACE OF BEGINNING.

Containing 5.924 Acres

**EXCEPTING** the rights of the public over the bounds of Dug Hill Road and Hurley Mountain Road.

Being the Same premise described in a deed dated 4/01/1966 from Joseph F. McSpirit , as grantor to Robert A. McKinnon, as grantee, and filed in the Ulster County Clerk's Office in Liber 1180, at page 409.



EXHIBIT "B"

DEUT 1846 "THOU SHALT NOT REMOVE  
THY NEIGHBOR'S LANDMARK ..."

UNAUTHORIZED ALTERATION OR AD  
TO THIS SURVEY MAP IS A VIOLAT  
SECTION 7209(2) OF THE NEW YOI  
EDUCATION LAW.

DEED REFERENCE: Joseph F. McSpirt to R.  
McKinnon dated 4/01/1968 and filed in th.  
County Clerks Office in Liber 1180 deeds p.

PAVED NORTH  
December 2002

LAND OF  
NEW YORK STATE  
Proclamation No. 279

LAND NOW OF HURLEY  
BRYANT & BALEY  
L 179 R 20

5.924 Acres

26 inches of snow cover at time of survey  
Property line along the Englishman's Kill is  
as per boundary line agreement dated 6/19/1973  
and recorded in the Ulster County Clerks  
Office in Liber 1301 of deeds page 306.

V.D. L. BREWER, P.L.S.  
MEYERS AND FORESTRY  
Reg. No. 49803  
101 Shaw Street  
New York 10102  
452 339-1487

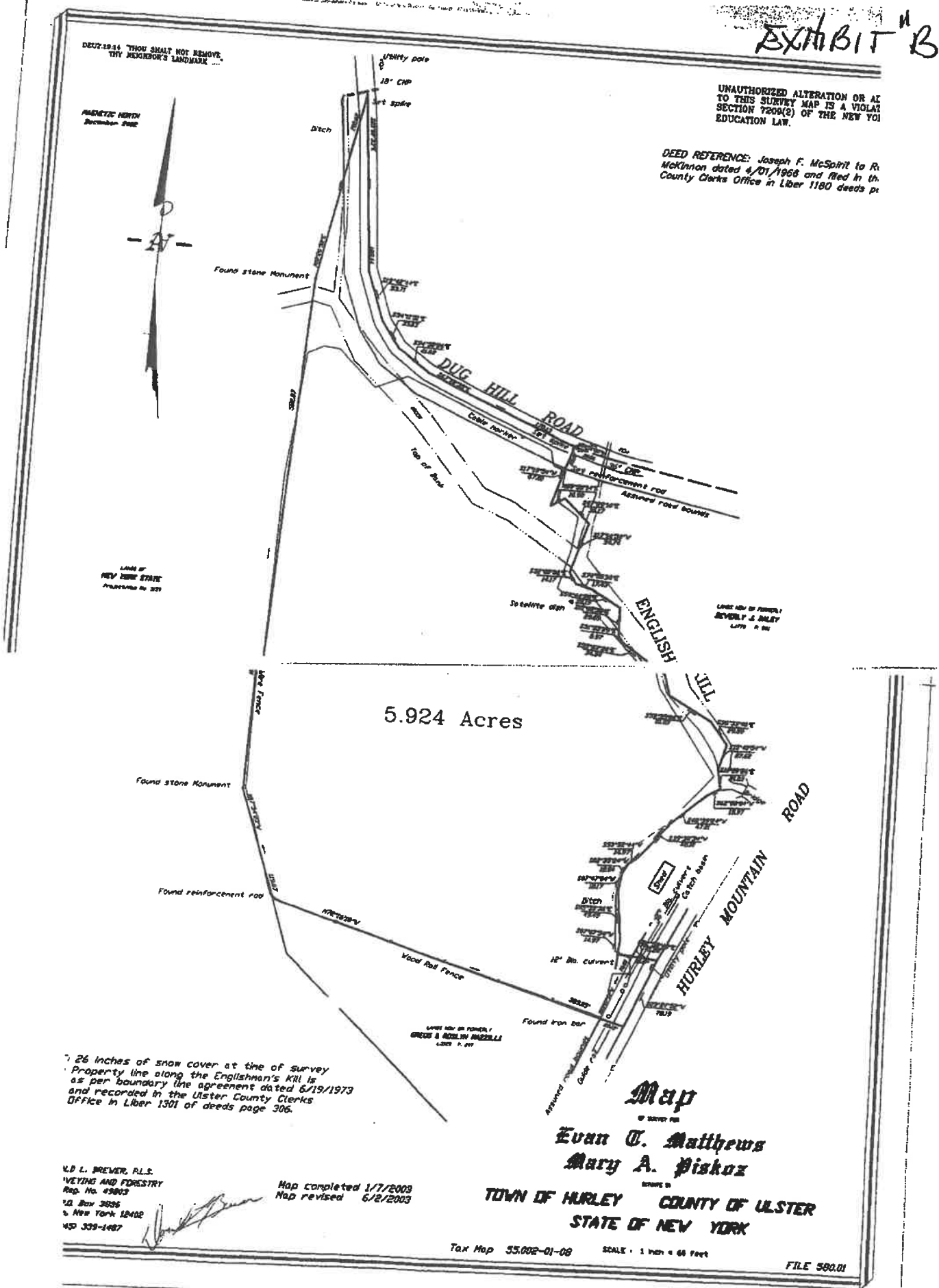
Map completed 1/7/2003  
Map revised 6/2/2003

Map  
© 2003  
Evan C. Matthews  
Mary A. Piskoz  
TOWN OF HURLEY COUNTY OF ULSTER  
STATE OF NEW YORK

Tax Map 55,002-01-06

SCALE: 1 inch = 66 Feet

FILE 580.01



SEORA REGULATIONS

617.4  
617.5

- (9) any Unlisted action (unless the action is designed for the preservation of the facility or site) occurring wholly or partially within, or substantially contiguous to, any historic building, structure, facility, site or district or prehistoric site that is listed on the National Register of Historic Places, or that has been proposed by the New York State Board on Historic Preservation for a recommendation to the State Historic Preservation Officer for nomination for inclusion in the National Register, or that is listed on the State Register of Historic Places (The National Register of Historic Places is established by 36 Code of Federal Regulation (CFR) Parts 60 and 63, 1994 (see section 617.17 of this Part));
- (10) any Unlisted action, that exceeds 25 percent of any threshold in this section, occurring wholly or partially within or substantially contiguous to any publicly owned or operated parkland, recreation area or designated open space, including any site on the Register of National Natural Landmarks pursuant to 36 CFR Part 62, 1994 (see section 617.17 of this Part); or
- (11) any Unlisted action that exceeds a Type I threshold established by an involved agency pursuant to section 617.14 of this Part.

617.5 TYPE II ACTIONS.

- \* (a) Actions or classes of actions identified in subdivision (c) of this section are not subject to review under this Part. These actions have been determined not to have a significant impact on the environment or are otherwise precluded from environmental review under Environmental Conservation Law, article 8. The actions identified in subdivision (c) of this section apply to all agencies.
- (b) Each agency may adopt its own list of Type II actions to supplement the actions in subdivision (c) of this section. No agency is bound by an action on another agency's Type II list. An agency that identifies an action as not requiring any determination or procedure under this Part is not an involved agency. Each of the actions on an agency Type II list must:
  - (1) in no case, have a significant adverse impact on the environment based on the criteria contained in subdivision 617.7(c) of this Part; and
  - (2) not be a Type I action as defined in section 617.4 of this Part.
- \* (c) The following actions are not subject to review under this Part:
  - (1) maintenance or repair involving no substantial changes in an existing structure or facility;
  - (2) replacement, rehabilitation or reconstruction of a structure or facility, in kind, on the same site, including upgrading buildings to meet building or fire codes, unless such action meets or exceeds any of the thresholds in section 617.4 of this Part;



- (3) agricultural farm management practices, including construction, maintenance and repair of farm buildings and structures, and land use changes consistent with generally accepted principles of farming;
- (4) repaving of existing highways not involving the addition of new travel lanes;
- (5) street openings and right-of-way openings for the purpose of repair or maintenance of existing utility facilities;
- (6) maintenance of existing landscaping or natural growth;
- (7) construction or expansion of a primary or accessory/appurtenant, non-residential structure or facility involving less than 4,000 square feet of gross floor area and not involving a change in zoning or a use variance and consistent with local land use controls, but not radio communication or microwave transmission facilities;
- (8) routine activities of educational institutions, including expansion of existing facilities by less than 10,000 square feet of gross floor area and school closings, but not changes in use related to such closings;
- (9) construction or expansion of a single-family, a two-family or a three-family residence on an approved lot including provision of necessary utility connections as provided in paragraph (11) and the installation, maintenance and/or upgrade of a drinking water well and a septic system;
- (10) construction, expansion or placement of minor accessory/appurtenant residential structures, including garages, carports, patios, decks, swimming pools, tennis courts, satellite dishes, fences, barns, storage sheds or other buildings not changing land use or density;
- (11) extension of utility distribution facilities, including gas, electric, telephone, cable, water and sewer connections to render service in approved subdivisions or in connection with any action on this list;
- (12) granting of individual setback and lot line variances;
- (13) granting of an area variance(s) for a single-family, two-family or three-family residence;
- (14) public or private best forest management (silvicultural) practices on less than 10 acres of land, but not including waste disposal, land clearing not directly related to forest management, clear-cutting or the application of herbicides or pesticides;
- (15) minor temporary uses of land having negligible or no permanent impact on the environment;

ZONING

**Table of Use Regulations**  
 [Amended 9-21-1991 by L.L. No. 1-1991; 6-23-1992 by L.L. No. 2-1992;  
 11-24-2003 by L.L. No. 2-2003; 8-23-2004 by L.L. No. 1-2004]

Symbols:

- (P) Designates a use permitted by right.
- (S) Designates a use permitted by right, subject to site plan review.
- (X) Designates a conditional use contingent on securing a special use permit in each case, from the Planning Board in compliance with the specific standards set forth in Article VI and subject to site plan review.

Type                      **A-4\***   A-2.5   R-1   R-2   NC   B-1   B-2   I-1   H

**Residential Uses**

Detached one-family dwelling	P	P	P	P	P	P	—	—	P
Semidetached one-family dwelling	P	P	P	P	P	P	—	—	P
Two-family dwelling	P	P	P	P	P	P	—	—	P
Townhouses subject to § 210-38	S	S	S	S	S	—	—	—	—
Mobile home	P	P	—	—	—	—	—	—	—
Mobile home park	—	S	—	—	—	—	—	—	—
Medical and dental service facility	—	—	X	—	—	X	X	X	—

**General Uses**

Agriculture (not including the keeping of fowl or farm animals)	P	P	P	P	P	P	P	P	P
Agriculture (including the keeping of fowl or farm animals)	P	P	—	—	—	—	—	—	—
Retail sale of agricultural produce grown on the same lot or farm from a road stand	X	X	—	—	—	—	—	—	—

by Eminent

Permanent Domain  
Local Land Use

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Op Counsel SBPFS No. 131, 2001 WL 24072390, 2001

**Agricultural production**

Farmland rented for several years to another and now being farmed by its owner who plants a different crop than did the former lessee is not a newly established farm operation for purposes of section 301(4) of the Agriculture and Markets Law. 11 Op Counsel SBPFS No. 124, 2008 WL 1867408, 2008

**Assessors**

An assessor may not require a county soil and water conservation district to revise its worksheets which the assessor uses to administer the Agricultural Districts Law, but the assessor may request such revision in certain circumstances. An assessor may not rely solely on zoning ordinance maps to conclude that areas classified by such worksheets are residential in nature, rather than assessors' personal observation is required. 11 Op Counsel SBPFS No. 92, 2005 WL 307386, 2005

**Erroneous assessment**

A transfer of development rights associated with property receiving an agricultural assessment under section 305 or 306 of the Agriculture and Markets Law does not constitute a conversion of the use of such property. 11 Op Counsel SBPFS No. 76, 2005 WL 3524066, 2005

Where a life tenant is confined to a nursing home, occupancy of the life tenant's home by the (non-spouse) remainderman disqualifies such home from eligibility for the school tax reduction. 11 Op Counsel SBPFS No. 12, 2001 WL 3407238, 2001

**§ 305-a Coordination of local planning and land use decision-making with the agricultural districts program**

Policy of local governments. a. Local governments when exercising their powers to enact and administer comprehensive plans and

**10. Conversion to non-agricultural use**

Property which is excluded from the boundaries of an agricultural district after a district review may be converted thereafter to a non-agricultural use without incurring liability for conversion payments. The county legislative body, however, may act to prevent the avoidance of conversion payments by refusing to amend an agricultural district's boundaries upon a finding that the land in question is still viable farmland whose continued inclusion in the district further the purposes for which such district was originally created. 11 Op Counsel SBPFS No. 62, 2004 WL 311742, 2004

Consumer pre-harvest crop payment contracts under a community supported agricultural program may be included in gross sales for purposes of determining eligibility for an agricultural assessment, provided those making the payments have no ownership interest in the farm. 11 Op Counsel SBPFS No. 102, 2007 WL 333317, 2007

**11. Gross sales requirement**

The Program's wildlife conservation incentive payments may not be considered in computing the statutory gross sales requirement. 11 Op Counsel SBPFS No. 100, 2007 WL 310416, 2007

**12. Penalty for conversion**

Agricultural lands receiving an agricultural assessment which is disturbed by gravel mining will not be subject to a conversion payment provided such land is restored and ready for a resumption of farming by the next taxable status date following such mining. If such restoration does not take place by that date, conversion payments will be owed. 11 Op Counsel SBPFS No. 105, 2007 WL 310181, 2007

§ 305-a

AGRICULTURE AND MARKETS LAW

Local laws, ordinances, rules or regulations shall exercise these powers in such manner as may realize the policy and goals set forth in this article 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.

b. Upon the request of any municipality, farm owner or operator, the commissioner shall render an opinion to the appropriate local government officials, as to whether farm operations would be unreasonably restricted or regulated by proposed changes in local land use regulations, ordinances or local laws pertaining to agricultural practices and to the appropriate local land use enforcement officials administering local land use regulations, ordinances or local laws or reviewing a permit pertaining to agricultural practices.

c. The commissioner, upon his or her own initiative or upon the receipt of a complaint from a person within an agricultural district, may bring an action to enforce the provisions of this subdivision.

2. Agricultural data statement, submission, evaluation. Any application for a special use permit, site plan approval, variances or subdivision approval requiring municipal review and approval by a planning board, zoning board of appeals, town board or village board of trustees pursuant to article sixteen of the town law or article seven of the village law that would occur on property within an agricultural district containing a farm operation or on property with boundaries within five hundred feet of a farm operation located in an agricultural district, shall include an agricultural data statement. The planning board, zoning board of appeals, town board or village board of trustees shall evaluate and consider the agricultural data statement in its review of the possible impacts of the proposed project upon the functioning of farm operations within such agricultural district. The information required by an agricultural data statement may be included as part of any other application form required by local law, ordinance or regulation.

3. Agricultural data statement, notice provision. Upon the receipt of such application by the planning board, zoning board of appeals, town board or village board of trustees, the clerk of such board shall mail written notice of such application to the owners of land as identified by the applicant in the agricultural data statement. Such notice shall include a description of the proposed project and its location, and may be sent in conjunction with any other notice mandated by state or local law, ordinance, rule or regulation for the said project. The cost of mailing said notice shall be borne by the applicant.

4. Agricultural data statement, content. An agricultural data statement shall include the following information: the name and address of the applicant; a description of the proposed project and its location; the name and address of any owner of land within the agricultural district, which land contains farm operations and is located within five hundred feet of the boundary of the property upon which the project is proposed; and a tax map or other map showing the site

AGRICULTURE AND MARKETS LAW

of the proposed project relative to identified in the agricultural data statement. Added L. 1992, c. 634, § 3. Amended L. 2011, c. 497, § 1, eff. Sept. 23, 2011.

Research B

Encyclopedias, 147-148; 41 Am. Jur. Proof of Facts 8d 495; Chall on Mobile and Manufactured Home, 120 Am. Jur. Proof of Facts 3d 253; E. Other Legal Requirements, Poultry Animals, 147-148; Forms, 147-148; 24 S. 145, 142; Defects in Treatises and Practice Aids, New York Zoning Law and Practice, Federal Regulations and Agriculture.

Notes of L

Construction with other laws, 15; Farm operations restrictions, 2.

1. Construction and application.

Where a municipality seeks to administer a zoning ordinance in a manner that is in conflict with the policy objectives of the Agriculture and Markets Law, the zoning ordinance is superseded. Inver Lakes Health, Inc. v. Town of Ticonderoga Town Bd., 33 Dep't. 2004 (3 A.D. 3d 848, 786 N.Y.S.2d 643), Zoning And Planning ¶ 1020.

Provision of Agriculture and Markets Law prohibiting local governments from unreasonably restricting or regulating farm operations within agricultural districts does not exempt from its reach zoning ordinances enacted prior to the creation of a particular agricultural district. Inver Lakes Health, Inc. v. Town of Ticonderoga Town Bd., 33 Dep't. 2004 (3 A.D. 3d 848, 786 N.Y.S.2d 643), Zoning And Planning ¶ 1022; Zoning And Planning ¶ 1080.

Amendments to Agriculture and Markets law that prohibited administering local laws in a manner that would unreasonably restrict farming were intended to correct technical errors and to strengthen, not limit, the protections against unreasonably re-

AGRICULTURE AND MARKETS LAW

...ing a new orchard or vineyard and rented by a newly established farm or fourth year of agricultural

...acres used as a single operation for Christmas trees when such land is used for Christmas trees that will be made by transplanting or cut from the stump by a newly established farm, fourth or fifth year of agricultural

...apiary products operation which consists of (i) not less than seven acres a single operation in the preceding sale of crops, livestock or livestock products value of ten thousand dollars or more used as a single operation in the production for sale of crops, livestock or gross sales value of fifty thousand dollars to support an apiary products operation be limited to the land under a production of crops, livestock or livestock products are produced, harvested and reared and maintained by the operation of the landowners. Notwithstanding any other provision of this act, any land rented land associated with an operation eligible for an agricultural assessment

...by a farm operation in its first year of operation or in the case of a commercial horse racing operation, that consists of at least ten horses, regardless of the gross sales value of the operation, but not limited to riding lessons, horse racing or through the production of livestock products, or through both the above activities and such production, this subdivision be construed to include any operation is horse racing.

...development or extraction activity of fixtures and equipment which development or extraction of oil, gas, access roads, drilling apparatus and turbines.

...agricultural land" means land which is used for the production of high value crops, including, but not limited to, horticultural specialties.

...lands land highly suitable for a farm

AGRICULTURE AND MARKETS LAW

EXHIBIT "D"

9. "Conversion" means an onward or affirmative act changing the use of agricultural land and shall not mean the increase or holding of such land for agricultural purposes.

10. "Gross sales value" means the proceeds from the sale of:

a. Crops, livestock and livestock products produced on land used in agricultural production provided, however, that whenever a crop is processed before sale, the proceeds shall be based upon the market value of such crop in its unprocessed state;

b. Woodland products from farm woodland eligible to receive an agricultural assessment, not to exceed two thousand dollars annually;

c. Honey and beeswax produced by bees in hives located on an otherwise qualified farm operation but which does not independently satisfy the gross sales requirement;

d. Maple syrup processed from maple sap produced on land used in agricultural production in conjunction with the same or an otherwise qualified farm operation;

e. Or payments received by reason of land set aside pursuant to paragraph c of subdivision four of this section;

f. Or payments received by thoroughbred breeders pursuant to section two hundred fifty four of the racing, pari-mutuel wagering and breeding law; and

g. Compost, mulch or other organic biomass crops as defined in subdivision sixteen of this section produced on land used in agricultural production, not to exceed five thousand dollars annually.

Renumbered

11. "Farm operation" means the 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, including a "commercial horse boarding operation" as defined in subdivision thirteen of this section, a "timber operation" as defined in subdivision fourteen of this section, "compost, mulch or other biomass crops" as defined in subdivision sixteen of this section and "commercial equine operation" as defined in subdivision seventeen of this section. Such farm operation may consist of one or more parcels of owned or rented land, which parcels may be contiguous or noncontiguous to each other.

12. "Agricultural data statement" means an identification of farm operations within an agricultural district located within five hundred feet of the boundary of property upon which an action requiring municipal review and approval by the planning board, zoning board of appeals, town board, or village board of trustees pursuant to article sixteen of the town law or article seven of the village laws proposed as provided in section three hundred five-a of this article.

13. "Commercial horse boarding operation" means an agricultural enterprise consisting of at least seven acres and boarding at least ten horses, regardless of ownership, that receives ten thousand dollars or more in gross receipts annually from fees generated either through the boarding of horses or through the production for sale of crops.

livestock, and livestock products, or through both such boarding and such production. Under no circumstances shall this subdivision be construed to include operations whose primary on-site function is horse racing. Notwithstanding any other provision of this subdivision, a commercial horse boarding operation that is proposed or, in its first or second year of operation, may qualify as a farm operation if it is an agricultural enterprise consisting of at least seven acres and boarding at least ten horses, regardless of ownership, by the end of the first year of operation.

14. "Timber operation" means the on-farm production, management, harvesting, processing and marketing of timber grown on the farm operation into woodland products, including but not limited to logs, lumber, posts and firewood, provided that such farm operation consists of at least seven acres and produces for sale crops, livestock or livestock products of an annual gross sales value of ten thousand dollars or more and that the annual gross sales value of such processed woodland products does not exceed the annual gross sales value of such crops, livestock or livestock products.

15. "Agricultural tourism" means activities, including the production of maple sap and pure maple products made therefrom, conducted by a farmer on-farm for the enjoyment and/or education of the public, which primarily promote the sale, marketing, production, harvesting or use of the products of the farm and enhance the public's understanding and awareness of farming and farm life.

16. [As added by L.2008, c. 341. See also § 301.16 below.] "Apiary products operation" means an agricultural enterprise consisting of land owned by the operation upon which bee hives are located and maintained for the purpose of producing, harvesting and storing apiculture products for sale.

16. [As added by L.2008, c. 356. See also § 301.16 above.] "Compost, mulch or other organic biomass crops" means the on-farm processing, mixing, handling or marketing of organic matter that is grown or produced by such farm operation to aid such farm operation of its excess agricultural waste; and the on-farm processing, mixing or handling of off-farm generated organic matter that is transported to such farm operation and is necessary to facilitate the composting of such farm operation's agricultural waste. This shall also include the on-farm processing, mixing or handling of off-farm generated organic matter for use only on that farm operation. Such organic matter shall include, but not be limited to, manure, hay, leaves, yard waste, stumps, organic farm waste, vegetation, wood biomass or byproducts of agricultural products that have been processed on such farm operation. The resulting products shall be converted into compost, mulch or other organic biomass crops that can be used as fertilizers, soil enhancers or supplements, on bedding materials. For purposes of this section, "compost" shall be processed by the aerobic thermophilic decomposition of solid organic constituents of solid waste to produce a stable, humus-like material.

17. "Commercial equine operation" means an agricultural enterprise consisting of at least seven acres and stabling at least ten

horses, regardless of ownership, that r more in gross receipts annually from provision of commercial equine activities including lessons, trail riding activities or the production for sale of crops, livestock through both the provision of such commercial production. Under no circumstances shall this subdivision be construed to include operations whose primary on-site function is horse racing. Notwithstanding any other provision of this subdivision, a commercial equine operation that is proposed or, in its first or second year of operation, may qualify as a commercial equine operation if it is an agricultural enterprise consisting of at least seven acres and stabling at least ten horses, regardless of ownership, by the end of the first year of operation. (Added L.1987, c. 773, § 1. Amended L.1991, c. 3, § 3; L.1989, c. 398, § 1; L.1989, c. 448, § 1; L.1990, c. 396, § 1; L.1992, c. 27, § 1; L.1993, c. 534, § 1; L.1992, c. 797, § 1; L.1993, c. 440, c. 566, § 1.2; L.1995, c. 235, § 1; L.1995, c. 1997, c. 62, § 1, eff. May 20, 1997; L.1997, c. 473, § 1.2, eff. Sept. 7, 1999; L.2001, c. 388, § 1, eff. Jan. 31, 2001; L.2002, c. 516, § 1, eff. Sept. 17, 2002; L.2003, c. 459, § 1, eff. Sept. 9, 2003; L.2004, c. 10, § 1, eff. Feb. 24, 2004; L.2005, c. 200, § 1, eff. July 12, 2005; L.2005, c. 587, § 1.2, eff. Aug. 23, 2005; L.2006, c. 600, § 2, eff. Aug. 16, 2006; L.2008, c. 611, § 1, eff. Sept. 25, 2008; L.2008, c. 611, § 1, eff. Sept. 25, 2008; L.2010, c. 120, § 1.2, eff. June 15, 2010; L.2011, c. 389, § 1.2, eff. Aug. 3, 2011; L.2012, c. 344, § 1, eff. Sept. 30, 2012.)

§ 301.16 USGA § 1281 et seq. L.2008, c. 341, § 1.

Historical and Statutory

L.2008, c. 341 legislation. farm  
L.2008, c. 341, § 4, provides: nomi  
This act shall take effect immedi- A  
ately July 21, 2008, and shall apply braci  
to assessment rolls prepared on the farm  
basis of taxable status dates occur- diver  
ring on or after such effective date. helpi  
and  
L.2006, c. 600 legislation. the f  
L.2006, c. 600, § 3, provides: ances  
§ 17. Legislative intent. Farm and f  
ing in this state is essential to the omy,  
economic, social and environmental may  
well-being of all New Yorkers. New times  
York state has led in establishing pol- their  
icies and programs to promote a AT  
strong agricultural economy through affir  
the diversification of farm businesses, touris  
and products in order to generate provi



EXHIBIT "B"

**ANDREW ZELL**  
**PO Box 97**  
**Hurley, New York 12443**

**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:

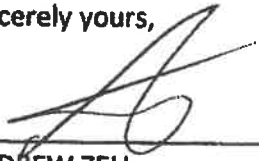
As the August 19, 2014 Request for Interpretation submitted by Michael Moriello, Esq. is somewhat rambling, I am writing this letter so you may better understand the intended use of the future farm operation on Hurley Mountain Road and its consistency with the Agriculture and Markets Law.

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 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 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.

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,

A handwritten signature in black ink, appearing to read 'Andrew Zell', written over a horizontal line.

ANDREW ZELL

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

9/4/2014

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

Dear Michael:

I am in receipt of you 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

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

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



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

TO: SUPERVISOR JOHN MORIELLO  
FROM: ZONING BOARD OF APPEALS  
DATE: NOVEMBER 14, 2014  
SUBJECT: C.E.O. HOFFSTATTER  
RE: 90 DUG HILL ROAD, HURLEY, NY 12443

2024

EXHIBIT "D"

Agriculture and Markets Law: Section 301: Article 25-AA

11. "Farm operation" means the 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, including a "commercial horse boarding operation" as defined in subdivision thirteen of this section, a "timber operation" as defined in subdivision fourteen of this section, "compost, mulch or other biomass crops" as defined in subdivision seventeen of this section and "commercial equine operation" as defined in subdivision eighteen of this section. Such farm operation may consist of one or more parcels of owned or rented land, which parcels may be contiguous or noncontiguous to each other.

## Agriculture and Markets Law: Section 301: Article 25-AA

17. "Compost, mulch or other organic biomass crops" means the on-farm processing, mixing, handling or marketing of organic matter that is grown or produced by such farm operation to rid such farm operation of its excess agricultural waste; and the on-farm processing, mixing or handling of off-farm generated organic matter that is transported to such farm operation and is necessary to facilitate the composting of such farm operation's agricultural waste. This shall also include the on-farm processing, mixing or handling of off-farm generated organic matter for use only on that farm operation. Such organic matter shall include, but not be limited to, manure, hay, leaves, yard waste, silage, organic farm waste, vegetation, wood biomass or by-products of agricultural products that have been processed on such farm operation. The resulting products shall be converted into compost, mulch or other organic biomass crops that can be used as fertilizers, soil enhancers or supplements, or bedding materials. For purposes of this section, "compost" shall be processed by the aerobic, thermophilic decomposition of solid organic constituents of solid waste to produce a stable, humus-like material.

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



EXHIBIT "E"  
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", is written over a horizontal line.

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

Cc: Andrew Zell  
Lee Winne