

**Town of Red Hook
Zoning Board of Appeals Meeting Minutes
January 10, 2007**

CALL TO ORDER

The meeting was called to order at 7:10 p.m. by Timothy Ross, Chairman.

ROLL CALL

Members present: Kenneth Anderson, Gordon Denegar, John Douglas, Robert Latimer, Corinne Weber, Tim Ross, Chairman, and Jim Ross, Town Board Liaison

Members absent: Michael Mosher

PRELIMINARY BUSINESS

The minutes of the November 8, 2006 meeting were unanimously approved.

There was no comment on the Planning Board minutes.

Building Inspector/ZEO permits and letters: It was noted that a proposed farm market on the corner of 9G and Kidd Lane would be applying for a Special Permit.

Comments from the Chairman: Tim Ross reminded Board members of the New York State requirement that they receive a minimum of four hours of training per year. He pointed out that the Dutchess County Planning Federation was offering courses in January that fulfill the requirement (Board members were provided with the course announcement and registration form).

Reappointment: Chairman Ross moved to re-appoint Lea Cassarino as Clerk of the Board for 2007. Corinne Weber seconded the motion, which was passed unanimously.

PUBLIC HEARING

7:20 p.m. 06-19 Raython Merrihew Request for Interpretation of the Red Hook Farmland Protection Law and its applicability to the applicant's lot located at 7887 Albany Post Road, Red Hook. Chairman Ross stated that after discussion with Town Attorney Chris Chale, it was agreed that input would be collected tonight, and the hearing would likely be continued to the February meeting.

Marie Welch, the official representative of the applicant, then provided a statement of her client's position. She explained that the land her client wishes to subdivide is surrounded on three sides by other parcels and shares a 300-foot border with agricultural land. However, her client's lot is not in the Agricultural District. The Planning Board maintains that the Farmland Protection Law applies to the lot and, therefore, homes built on the property should be clustered and nothing should be placed on agricultural soils or soils of statewide importance. However, on at least one lot of the subdivision, those soils cover most of the lot. The septic system needs to be located in an area that contains important soils. Ms. Welch stated that she believes the Farmland Protection Law only pertains to land in the Agricultural District and this lot is not in the Agricultural District. She also noted that agricultural soil and soils of statewide importance make up 75%-80% of the lots in the Town of Red Hook, and yet not all of them are in the Agricultural District. Thus, she feels the Planning Board is not interpreting the Farmland Protection Law properly since her client's lot is not an Ag District parcel.

Chairman Ross opened the public hearing at 7:20 p.m. He proceeded to read into the record three documents: 1) A memo from the Planning Board which included a legal opinion they had received from land use attorneys at Keane & Beane in 2005. This opinion was rendered when an applicant in a similar situation as the Merrihew case requested it. 2) A letter from Christopher Klose, brother of the late Woody Klose, who was chairman of the Town's Agricultural Advisory Committee when it drafted the Farmland Protection Law. 3) A letter to the applicant from Bob Fennell, Red Hook's Zoning Enforcement Officer, in which he indicates the Farmland Protection Law does apply to the Merrihew parcel. These documents are attached to and made part of this record.

The floor was then opened to comments from the public.

Robert McKeon, Red Hook, Chair of the Agricultural and Open Space Committee: This law took two years to develop and included a lot of public input, especially from local, large agricultural land owners. Although the law is not perfect, its intent is to protect a resource. If the applicant's position (that this law applies to land that is in the Ag District *and* has important soils) is supported by the ZBA, the law will be rendered useless. Membership in the Ag District involves enrolling with the County. If the law is as the applicant interprets it, then a landowner who has a parcel containing important soils and wishes to develop it, would merely choose not to enroll in the Ag District so as not to be subject to the Farmland Protection Law. There may be confusion with regard to the three criteria that are used to determine implementation of the law. Two are easily identifiable: presence of prime agricultural soils or the presences of soils of statewide agricultural importance. The third, active agricultural land, is open to interpretation. Thus, when the law was being drafted it was decided that if land was in the Ag District, it met this criteria. In summary, the intent of the law is to protect the resource and to help identify, to the benefit of both the applicant and the Town, what is active land and primary soils.

Larry Thetford, Red Hook, and member of the Agricultural and Open Space Committee: The Ag District is determined on an 8 years basis and is voluntary; however, one can join it annually. That makes the Ag District boundaries flexible and that is why the "and" is utilized in the law. Due to that flexibility, the (drafters of the law) did not want it to be exclusionary and only apply to Ag District members. They wanted to utilize the soils as another factor, rather than relying on a flexible boundary that changes annually. That's why the law was written that way.

Beth Mead, Mead Orchards, Red Hook: Was involved in the process of drafting the law; interested in maintaining Red Hook's rural character. Visitors like the fact that Red Hook is rural and something would be lost if farms were surrounded by development. Landowners have rights, but sometimes those rights need to be restricted for the good of the community,

Bob Fennell, Town of Red Hook Zoning Enforcement Officer: What are the criteria for getting into the Ag District?

Craig Vogel, Red Hook: To be in the Ag District one must have \$10,000 worth of agricultural sales annually. The land can be rented to someone to farm it, but that \$10,000 in sales must be met. The types of soils do not enter in to it; they only help determine what the reduction in agricultural value will be.

Richard Bazinsky, Red Hook: Being in the Ag District protects the property from such

things as eminent domain. Individuals make an 8-year commitment to get that protection.

Board member John Douglas asked about the membership criteria.

Robert McKeon: The process is different depending on whether you are joining at the beginning of a cycle or in the middle of a cycle; the requirements are different. If one joins within the 8 year cycle, there are soil requirements and it is necessary to prove the soils are suitable for farming. Otherwise, there are no soil requirements. The county holds public hearings for properties wishing to join the Ag District, and then approves those properties that are eligible for inclusion in the Ag District (in Red Hook it is Ag District 20).

Bob Fennell: So if there's no automatic tax advantage, what's the benefit of joining?

Robert McKeon: Joining gives one the right to Article 25 AA protection (NYS Ag and Markets Law), which protects the farmer against nuisance complaints from conflicting interests.

Richard Bazinsky: When the law was originally written, there was a Right to Farm Law. Does it really make a difference?

Bob Fennell: One does not need to be farming to be in the Ag District.

Robert McKeon: If one is in the Ag District and then stops farming, the land remains in the District until the conclusion of the 8-year cycle.

Bob Fennell: Aren't there a lot of lands in the Ag District that are not farmed?

Robert McKeon: No, I think it's just the opposite.

Marie Welch: The landowner needs to specifically request that his/her land be removed from the Ag District once the cycle is complete. There are many small parcels in this town, with small house lots on them that are still Ag District land because the request to remove them was never made.

Bob Fennell: So it's possible that a lot of parcels will be removed at the end of a cycle?

Robert McKeon: It's possible, but I would hope not. An impact of the ruling of this Board, if it rules in favor of the applicant, is that landowners may be reticent to join another 8 year cycle, thinking there might be a financial advantage not to do so, or flexibility with the development of their land. The Town could end up with many folks not taking advantage of signing up for the Ag District and not having the right of farm protection.

Board member John Douglas stated he was under the impression that a landowner in the Ag District had a reduction in land taxes. If that landowner decides to leave the Ag District s/he can by paying the differential between what the taxes should have been during the membership period and what was actually paid.

Robert McKeon: That's a common misconception. There's little relationship between being in the Ag District and having agricultural assessment. One can be in the Ag District without an agricultural assessment if you don't sell enough product to qualify. Conversely, one may not be in the Ag District but qualify for an ag assessment.

Board member John Douglas then asked that if a lot is in the ag district, does it stay in it forever even if the owner does not send in the renewal form?

Robert McKeon: Yes, one needs to opt out of the ag district.

Dick Hansen, Red Hook: Believes if he doesn't renew his membership in the Ag District he will automatically be removed from it.

Robert McKeon: The practice has been to leave a parcel in the district even if membership is not renewed. However, the membership form now states that a parcel *may* be removed from the Ag District if membership is not requested.

Craig Vogel: Advantages to being in the Agricultural District include: it's more difficult for one's land to be declared for public use, as in eminent domain proceedings. Also, if sewer or water lines are near the property but not used by the landowner, the property is not assessed for possible building lots. If any projects are undertaken within 500 ft. of the boundary of an Ag District parcel, the owner must be notified.

Robert McKeon: For land that continues to be farmed and left in the Ag District as a result of a subdivision, the Town of Red Hook waives the recreational fee. (This was questioned and followed by a general discussion.)

Christine Kane, Red Hook, Planning Board Chair: First, wished to clarify a statement made by the applicant: the Planning Board does not interpret the law, the ZBA does. Agriculture today is very different than it was 20 or 30 years ago and may be very different 20 or 30 years into the future. However, the soils remain the same. Whether farmed or not farmed, in Ag District or not, etc. the point is to preserve agricultural land, as stated in Red Hook's planning documents. Agriculture as a local industry is of great importance to the Town, and an important component of the area's rural history. The soils serve as a "defining point" to preserve that. Although there are many tools to use (clustering, etc.), once the farmlands start to break-up and farmers have to deal with multiple ownerships to get in and out of fields or to farm the property, that's when problems begin (examples can be seen in Dutchess County and throughout the country). It becomes more difficult for agriculture to continue, there is a shrinking of the farms, isolation of property, lack of access to fields, etc. Soils provide an easily defined and concrete criteria on which to base land use decisions.

Marie Welch: Reads from her 8/20/02 copy of the Farmland Protection Law, Section 143-7 (1)(a)[1] as follows: "The regulated farmland overlay area consists of those farmlands designated as prime farmlands, Classes 1 and 2, by the Soil Conservation Service of the United States Dept. of Agriculture, certified for inclusion in Dutchess County Agricultural District 20." Her copy indicates this passage is to be deleted. Feels this shows the intent of the law: they didn't want to burden all landowners with designated prime farmlands and agricultural soils; just those who wanted to farm and ask for the agricultural exemption. Also referred to the letter from Zoning Officer Fennell in which he indicated that parcels in the Ag District without important soils should be removed from the district. Ms. Welch indicated there is agricultural land that does not contain important soils, such as an apple orchard she's working with now. Feels the law is black and white. Her client's property is small – six acres – due to rock outcroppings and septic design issues can't make lots smaller, as they are being asked to do.

Christine Kane: Although there is a particular applicant with a particular parcel before the ZBA, there are cluster regulations in town that are above and beyond zoning and

subdivision law. Cluster regs, although tied to the Farmland Protection Law, already exist separately. The decision made by the board will be far reaching and should not be narrowly based on the many environmental conditions that exist on this particular parcel.

Chairman Ross noted that the entire board realizes that.

Robert McKeon: Believes clustering is significant. Important Farmlands 143-47 specifically references the cluster regulations. He then reads the following from section 143-33: “Cluster objective A(2) The Planning Board shall, in consideration of this intent, encourage and, as it deems advisable, mandate application of the cluster subdivision technique when the board finds that its application would benefit the town, for one or more of the following objectives would be better attained through its use than through application of the conventional lot-by-lot subdivision design technique.” The first example is: “(a) The preservation of active agricultural lands and/or the guidance of development away from agricultural lands. This is particularly important when adjacent parcels are in active agricultural use and use of clustering will maintain or enlarge the total land area available for contiguous agricultural use.”

Chairman Ross indicated that is a separate issue and is not what is currently before the board.

Robert McKeon: Disagreed and says the law specifically references the cluster regs when describing how the goals of the law should be achieved.

Chairman Ross reiterated that that is not what is being reviewed at present.

Sam Phelan, Red Hook, Planning Board Member: This has been the most frustrating law to try to implement. The case before the board typifies that frustration. No one disagrees with the larger picture of trying to preserve the more sizeable farms in Red Hook; nor do they disagree with the mechanisms in the law to try to preserve those significant parcels. It’s the marginal parcels that the law applies to that are problematic. Feels zoning ordinances are beginning to lose credibility because this law must be equally implemented for marginal as well as larger cases. Expects more such cases will come before the ZBA.

As there were no further comments, Chairman Ross continued the public hearing to the ZBA meeting on February 14 at 7:20 p.m. In the meantime, the Board will do research.

Paul Fredericks, who had been on the Zoning Review Committee, then spoke. It is important to note that no one is denying the need to protect farmland, but at the same time it is necessary to protect people who have certain investments in small parcels. Can’t have a law that denies some people their rights but enforces the rights of others.

Chairman Ross replied that the board couldn’t change the law; it can only decide how to apply it.

ADJOURNMENT

The meeting was adjourned at 8:05 p.m.

Respectfully submitted by,

Lea Cassarino
Clerk of the Board
Attachments

Town of Red Hook
PLANNING BOARD

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To: Town of Red Hook ZBA

From: Planning Board

Re: Important Farmlands Law

Date: November 29, 2006

The Planning Board has been asked to submit a letter explaining why it applies the Important Farmlands Law to proposed subdivisions of parcels which are not in the Certified Agricultural District but which are found to have prime soils and/or soils of Statewide importance.

The Board believes that Section 143-47 of the Town Zoning Code clearly requires the Board to take this step. Moreover, when an applicant requested a legal opinion regarding this question in 2005, the Board referred the matter to its land use attorneys at Keane & Beane. The Keane & Beane response, which supports the Board's current position, is attached.

If there are any further questions, please feel free to contact the Planning Board.

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MEMORANDUM

Attorney-Client Privileged Communication
Not Subject to FOIL

TO: Town of Red Hook Planning Board
FROM: Jennifer M. Porter, Esq.
RE: ~Subdivision - Farmland Issues
DATE: January 31,2005

Issue #1: If a parcel for subdivision is not in the agricultural district but contains protected soils (i.e. prime soils or soils of statewide importance), does that fact alone trigger review under Section 147-43 of the Zoning Code?

Answer: Yes

Analysis: Section 143-47 applies to all types of "important farmlands" not just to lands within an agricultural district. Evidence of the intention to regulate farmland which is not in the agricultural district but which contain prime soils or soils of statewide importance can be found by looking to the definition of "important farmland." Such term is defined as:

Important Farmland -- Land characterized by one or more of the following characteristics:

- (1) Presence of prime agricultural soils;
- (2) Presence of soils of statewide agricultural importance;
and
- (3) Active agricultural lands.

Moreover, section 143-47.D(4)(a)[I] provides that the regulated farmland overlay area consists of those farmlands certified for inclusion in Dutchess County Agricultural District 20 by the New York State Department of Agriculture and Markets pursuant to the

NYS Agricultural Districts Law and which have been determined by the Town Board, through their inclusion within the Environmental Protection Overlay (EP-O) District, to be of special significance to the Town. For these reasons, although land may be outside of an agricultural district, if such land contains prime soils or soils of statewide importance, such land still falls within the environmental protection overlay district and is subject to the provisions of section 143-47.

Echo Valley Farm

81 Echo Valley Road Red
Hook, NY 12571

January 10, 2007

To: Planning Board, Town of Red Hook
Zoning Board of Appeals, Town of Red Hook
Fr: Christopher Klose, Manager, Echo Valley Farm
RE: Interpretation of Red Hook Farmland Protection Law

On behalf of Echo Valley Farm, which we have owned and operated since 1943, and my late brother, Woody Klose, I am writing in support of Local Law No. 3, the Red Hook Farmland Protection Law. I understand its Section 143-47-0 (4) has and is being interpreted with support by an opinion from land use attorneys Keane & Beane.

Of his many contributions to our town, Woody perhaps was proudest of this law. As chairman of the Agriculture Advisory Committee, he worked tirelessly for more than two years for its passage.

Why?

Woody's clear intention

"Because," as he boomed to me one day a few months before he died while we sat reminiscing in the sun, "it puts the horse back in front of the cart, where it belongs. For thirty years, we have said the 'highest and best use' of the land is to subdivide it: farmers, farming and the land came last.

"That was backwards. Under this new law, the land comes first. As it should!"

He had a passionate, practical approach to preservation

In concluding "it is in the overall public interest of the Town of Red Hook to protect the important agricultural lands from development in order to maintain their availability for productive use," the Farmland Protection Law clearly expresses my brother's passion for preserving Red Hook's present and future agricultural potential.

Moreover, in seeking "to channel development away from such farmland and to permit sufficient flexibility in its zoning to maintain agriculture as a viable industry in the Town," it demonstrates Woody's *practical* approach to growth. ***Straightforward characteristics for farmland protection***

Anyone of the Farmland Protection Law's three characteristics should be considered sufficient for implementation of the law:

- presence of prime agricultural soils;
- presence of soils of statewide agricultural importance; and
- active agricultural lands

In the public interest ...

Continued implementation of the law as *it has been interpreted and supported by legal opinion to date* is in the best interests of Red Hook.

December 8, 2006

Raython Merrihew and William B.
Clarke Jr. 9 Boice Rd.
Rhinebeck, NY 12572

Re: Parcel6373-
00-016461
7887 Albany
Post Rd.
6.88 Acres

Gentlemen,

It is my understanding that you have applied to the Town of Red Hook Zoning Board of Appeals pursuant to Section 143-35 A of the Town Zoning Law for a formal Interpretation of a decision of the Town of Red Hook Planning Board in regard to the applicability of Section 143-47 "Important farmlands" of the Zoning Law as it relates to the subdivision of the above referenced parcel.

The jurisdiction of a Zoning Board of Appeals is appellate only and is limited to hearing and deciding appeals from and reviewing any order, requirement, decision, interpretation, or determination made by the administrator charged with the enforcement of the Zoning Law. An Interpretation is an appeal and it can not be taken from decisions of the Planning Board.

To facilitate your appeal to the ZBA and to make it possible, I am making the following determination as it relates to your application for subdivision and Section 143-35 A of the Zoning Law.

The referenced parcel is not located within Dutchess County Agricultural District 20 however it does contain both prime farmland soils and soils of statewide importance as indicated on the EP-O District Soil Map.

Section 143-47 (4) (a) (1) reads: "The regulated farmland overlay consists of those farmlands certified for inclusion in the Dutchess County Agricultural District 20 by the New York State Department of Agriculture and Markets pursuant to the Agricultural Districts Law *and* which have been determined by the Town Board, through there inclusion within the Environmental Protection Overlay (EP-O) District, to be of special significance to the Town " (Italics added).

The word "*and*" in the above paragraph does not mean "plus" or "in addition to" it seems to me that this "*and*" means "also". Thus the meaning seems to me to be that the regulated farmland overlay is either: lands in Ag District 20 or lands of special significance to the town (i.e. lands identified on the EP-O Map as having prime farmland soils or soils of statewide importance).

Accordingly, your above parcel is subject to the provisions of Section 143-47

You have also asked the ZBA to Interpret whether or not a parcel within Agricultural District 20 but which does not have prime farmland soils or soils of statewide importance is subject to Section 143 -47.

I think the law requires such application. If a parcel is in Agricultural District 20 and it does not have such important soils it seemingly should be removed from the Ag District by the NYS Department of Ag & Markets after their review.

Sincerely,

Robert D. Fennell
Zoning
Enforcement
Officer Town of
Red Hook