

**Town of Red Hook  
Zoning Board of Appeals**

**Determination Regarding Appeal by Raython Merrihew Regarding Interpretation of Red Hook Farmland Protection Law**

Appeal # 06-19            Application of Raython Merrihew for Interpretation of Red Hook Farmland Protection Law and its applicability to the applicant's lot located at 7887 Albany Post Road, Red Hook.  
Property Address:        7887 Albany Post Road, Red Hook, New York  
Property ID:              134889-6373-00-016461-0000; 6.88 acres  
Owner:                     William B. Clarke, Jr. and Raython E. Merrihew

**WHEREAS**, application was made to this Board on November 16, 2006 appealing an interpretation issued December 8, 2006 by Robert D. Fennell, Zoning Enforcement Officer, regarding the above-referenced property; and

**WHEREAS**, the application is a Type II action under 6 NYCRR Part 617; and

**WHEREAS**, a public hearing was properly noticed and held on the said application at the Town Hall in Red Hook, Dutchess County, New York on January 10, 2007, which hearing was continued to February ; and

**WHEREAS**, the continuation of the public hearing was then properly noticed and held on February 28, 2007 for the purposes of receiving additional written evidence, and such hearing was continued and concluded on such date; and

**WHEREAS**, at said public hearings all those who desired to be heard were heard and their testimony recorded; and

**WHEREAS**, the documentation listed at Attachment A was analyzed in reviewing the application and constitutes the record of this decision in addition to the public comments and testimony:

**WHEREAS**, all testimony and documents have been carefully considered, in compliance with the Red Hook Town Code Section 143-135(A) and Section 143-136, and the following pertinent facts noted:

1. The December 20, 2000 minutes of the Agricultural Advisory Committee include the following:..."The driving principle of the zoning review is to make it more friendly to farming."
2. The January 8, 2001 minutes of the Agricultural Advisory Committee include the following: ..."Norm Greig outlined an agricultural overlay district proposed as an

addition to the zoning law. Farms in the Agricultural District\* only would be included in the overlay.....\*Red hook Ag District contains 4,780 acres out of the town total of 21,575 acres, about 22%. There are about 60 landowners in the district.”

3. The January 19, 2001 letter from Woody N. Klose attached Recommendation No. 1 of Agricultural Advisory Committee to Town Board, which provided for a Red Hook Agricultural District Overlay to encompass all land designated by New York State as the Red Hook Agricultural District, providing generally for ½ acre to 1 acre maximum lot size, additional setbacks for the overlay and lands immediately adjacent; and agriculture and primary and preferred use.
4. The February 27, 2001 letter from Woody N. Klose attached Recommendation No. 1 of Agricultural Advisory Committee to Town Board as revised Feb. 22, 2001, which allowed exchange of deed restrictions within the overlay.
5. The February 22/March 1, 2001 minutes of the Agricultural Advisory Committee include the following: “If a farmer wanted the traditional pattern of development he/she could opt out of the Ag District....Individual farm plans would benefit farmers wanting to develop some lots. They are available free from Soil and Water, through Craig [Vogel]. A team of experts would analyze the financial, crop placement needs, etc. of the farm....”
6. The March 22, 2001 minutes of the Agricultural Advisory Committee include the following: “Specifics – should we revise the Farmland section of the Environmental Overlay or add an Agricultural Overlay? It was decided to do the revision, as much of the present overlay is relevant. We would change the name from “Prime Farmland” to Important, add Certified Agricultural District as a requirement, and include several bullets. These would be guidelines based on an overlay district in Sharon, CT.”
7. The March 29, 2001 minutes of the Agricultural Advisory Committee include the following: “...the farmer could choose to leave the Certified Ag District (that brings his land into REC NO 1, the Ag overlay). In that case, the Planning Board could mandate clustering.”
8. The April 19, 2001 minutes of the Agricultural Advisory Committee include the following: “...We discussed the possibilities of a farmer deciding to subdivide a lot, getting a whole farm plan, with building envelopes, roads and other features laid out, THEN in a few years changing his-her mind and want something different, such as dividing the farm into 10 acre lots with farming allowed. The resolution was that minor changes could be made to the map, but that the basic plan would stand. The time to make decisions is envisioned at the point of the farm plan, with the option to leave the Agricultural District if reserving farm land was not acceptable....”
9. The August 23, 2001 minutes of the Agricultural Advisory Committee included the following: “Art Brod will rewrite the proposed amendment to the Zoning Code. He’ll include allowing sale of 1 or 2 lots that wouldn’t trigger requiring the whole farm plan....After discussion it was decided to allow farmers to review their farm plans when the Ag District is renewed every eight years (So [illegible]

would be included.) Both of the above changes were in response to planning board ideas.”

10. The May 15, 2002 Memo from Marcy Appell indicates “This amendment will directly affect only those areas or establishments in the town which are in the Environmental Protection Overlay District, i.e., those lands certified for inclusion in Dutchess County Agricultural District 20 by the State of New York Department of Agriculture and Markets pursuant to the NYS Agricultural District Law.”
11. The October 18, 2003 memo from Marcy Appell and Ruth Oja encloses a memorandum dated October 3, 2003 from Art Brod to Supervisor Gilfeather and others, with proposed amendments to the Environmental Protection Overlay District, presented as Proposed Local Law No. \_\_ of 2003. The memorandum from Mr. Brod indicates that “The Proposed Local Law has been prepared in response to your combined requests and has as its principal features the following: .....Based upon insight I gained while focus was on the farmland protection regulations during recent review by the Planning Board and Agricultural Advisory Committee of a proposed subdivision within the Agricultural District, modification of the regulations set forth within Section 143-47D(4) as follows: To expand the declaration of purpose within Section 143-47D(4)(a)....To more specifically identify within 143-47D(4)(a)(1) regulated farmland and to do so consistency with the Town’s declaration of purpose, thus including all active agricultural lands within Agricultural District 20 and/or those other lands whether within or outside an [sic] the Agricultural District that are important farmlands, i.e. areas of prime agricultural soils, areas of soils of statewide importance and active agricultural lands....”
12. The October 24, 2003 minutes of the Agricultural Advisory Committee indicate “We agreed that the limits of the program should be increased to include farmland both in and outside Ag Districts.”
13. The October 30, 2003 minutes of the Agricultural Advisory Committee indicate “On the threshold question, we thrashed around percentages of prime and state wide important soil types that would trigger requiring a farm plan. This becomes important because the zoning revision omits the Ag District membership requirement. However, if it were too broad a threshold, most parcels would qualify. We also noted that soil types should be shown on the new EP-O maps. It was suggested that instead of soil type thresholds, a minimum acreage requirement be used.
14. There is no record that such an amendment was adopted nor that a public hearing was held regarding the proposed amendment.

**WHEREAS**, pursuant to the Red Hook Town Code 143-153(A), the Board has found and determined that:

1. The plain meaning of the provision is that the law applies to land in the Certified Ag District, and within that area, a farmland protection plan is to be used in

conjunction with cluster provisions to locate development away from “Important Farmlands.” The conjunction “and” does not mean “and/or” in this context. The three-prong definition of Important Farmlands was not intended to provide a basis for applying the law outside of the Ag District. We agree that the plain meaning must be interpreted in the light of the intent of the provision and its legislative history.

2. The history of the provision in its application indicates that the Planning Board has applied the law since its adoption to parcels within the Ag District, at least in a few cases, to parcels outside the Ag District on advice of their counsel Keane and Beane. Such application by the Planning Board should be given some deference by this board where the interpretation proposed is supported by the text and legislative history. That is not the case here, however.
3. The legislative history of the provision prior to its adoption, including minutes of the committee which drafted the law, the recommendation letter from the planning board, and minutes from the Town Board’s public hearing in the matter, consistently indicates that the law was intended at the time to be limited to property within the Agricultural District boundary. The purpose of a farmland protection plan was to support development of a plan for farms, not farm soils outside of the Agricultural District or marginal farmland on small acreages.
4. The Planning Board has on file a soils map which provides a basis for applying the Farmland Protection Law to lands which are prime agricultural soils and soils of statewide agricultural importance, but such map does not identify active agricultural lands, which is the third prong of the important farmlands category.
5. If the law were to be interpreted as proposed by Keane and Beane on behalf of the Planning Board, there is no indication in the law itself as to what areas were to be affected. The law requires a map with tax parcel ID’s to be on file with the Town Clerk, presumably to give notice of what parcels are included, and no such map is on file other than the Agricultural District map.
6. Article VIII of the Red Hook Town Code authorizes the Planning Board to require clustering in connection with a residential subdivision. Such clustering may be required regardless of whether the property is within the Agricultural District or outside it, where identified resources exist. Clustering remains a valid tool in connection with environmentally significant property including open space, wetlands, soils identified as Important Farmlands, or other areas of environmental significance in the Town.
7. We note that Article 25-AA of the Agriculture and Markets Law provides that “Local governments, when exercising their powers to enact and administer comprehensive plans and local laws, ordinances, rules or regulations, shall exercise these powers in such manner as may realize the policy and goals set forth in 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.” As we interpret it, the Farmland Protection Law does not use the Certified Agricultural District boundary as the sole criterion for applicability. The law simply uses such

boundary as a convenient limit for focusing the law, but within that boundary there must be a further determination by the Planning Board as to what lands meet the "Important Farmlands" definition and thus are covered by the law. Moreover, the law was originally intended to provide additional flexibility for subdivision within the Agricultural District; properties are allowed to develop 1/2 acre parcels within an area normally reserved for 3-acre lots, and as enacted density transfers were to be permitted. Moreover, the law is to be applied "insofar as practicable." Thus, the law is not unduly restrictive as defined in the Agriculture and Markets Law.

**NOW, THEREFORE, BE IT RESOLVED**, that:

- 1. The appeal from the December 8, 2006 interpretation of Robert D. Fennel is granted. The December 8, 2006 order of Robert D. Fennel is hereby vacated.
- 2. This Board finds that the Farmland Protection Law, Section 147-143(D) of the Town Code, applies to property within the Town which constitutes Important Farmlands located within the Certified Agricultural District.
- 3. A copy of this decision shall be filed with the Town Clerk, the Zoning Enforcement Officer, the Building Inspector, and the Secretary of the Planning Board within ten days of adoption of this resolution.

Dated: March 14, 2007

Moved By: James Ross

Seconded By: Robert Latimer

Kenneth Anderson: \_\_Aye\_\_  
John Douglas: \_\_Aye\_\_  
Robert Latimer: \_\_Aye\_\_  
Michael Mosher: \_\_Absent\_\_  
Tim Ross: \_\_Aye\_\_  
Corinne Weber: \_\_Aye\_\_  
[Vacant]

Approved by the Zoning Board of Appeals this 14th day of March, 2007

Sheila Franklin, Clerk of the Board

ATTACHMENT A  
Appeal # 06-19

1. Order dated December 8, 2006 issued by Robert D. Fennell, Zoning Enforcement Officer,
2. Copy of Application for Interpretation dated November 16, 2006 .
3. Local Law No. 2001-3 adopted July 9, 2001.
4. Copy of Town Clerk's record of filing certificate of correction of Local Law No. 3 of 2001 with the Secretary of State.
5. Minutes of the ZBA Meeting held January 10, 2007, and minutes of public hearing held January 10, 2007 including the following communications received at or prior to the hearing:
  - a. Letter dated January 10, 2007 from Christopher Klose.
  - b. Memo dated November 29, 2006 from Planning Board.
6. Minutes of the public hearing held February 28, 2007 including the following communications received at or prior to the hearing:
  - a. Letter dated February 13, 2007 from Joel H. Sachs of Keane & Beane, P.C.
  - b. Letter dated February 10, 2007 from Jean P. Bordewich.
7. Minutes of the Agricultural Advisory Committee bearing the following dates and filed in the office of the Secretary of the Planning Board:
  - a. December 20, 2000; January 8, 2001; January 18, 2001; February 1, 2001; February 15, 2001; February 22 and March 1, 2001; March 8, 2001; March 15, 2001; March 22, 2001; March 29, 2001; April 5, 2001, April 19, 2001; May 3, 2001; May 10, 2001; May 17, 2001; June 21, 2001; June 28, 2001; July 12, 2001; August 23, 2001; September 13, 2001; September 27, 2001 and October 4, 2001; October 18, 2001; November 1, 2001;
  - b. Town of Red Hook Agricultural Advisory Committee Recommendation No. 1: Agricultural Overlay District; Draft 5/03/01
8. January 19, 2001 Letter from Woody N. Klose to John Gilfeather, Supervisor, with Recommendation No. 1 of Agricultural Advisory Committee to Town Board.
9. February 27, 2001 Letter from Woody N. Klose to John Gilfeather, Supervisor, with Recommendation No. 1 of Agricultural Advisory Committee to Town Board as revised February 22, 2001.
10. September 12, 2001 memorandum from Art Brod, Town Planning Consultant, to Town of Red Hook Agricultural Advisory Committee.
11. October 9, 2001 Minutes of the Town Board hearing regarding Finding of the Agricultural Advisory Committee on Open Space.
12. Farmland Protection Overlay District Proposal; An Amendment to the Red Hook Zoning Law offered by the Agricultural Advisory Committee
13. October 15, 2001 Minutes of the Planning Board.
14. October 16, 2001 Memo from Marcy Appell, Planning Board Chair, to Supervisor Gilfeather and Town Board Members.

15. May 15, 2002 Memo from Marcy Appell, Planning Board Chair, to Supervisor Gilfeather and Town Board Members.
16. Handout entitled "Farmland Protection Overlay District Proposal" prepared by the County Planning Department and provided to Board.
17. Minutes of Meeting of May 14, 2002.
18. Notice of Public Hearing to be held May 22, 2002 regarding Proposed Local Law No. 3.
19. Minutes of Public Hearing held May 22, 2002.
20. Notice of Public Hearing to be held July 9, 2002 regarding Proposed Local Law No. 3.
21. Minutes of Public Hearing held July 9, 2002 regarding proposed Local Law No. 3.
22. Minutes of Town Board Meeting held July 9, 2002 approving Local Law No. 3.
23. October 18, 2003 Memorandum from Marcy Appel and Ruth Oja of the Town of Red Hook Planning Board to Supervisor Gilfeather and Town Board Members, and others. Such Memo attaches a Memo dated October 3, 2003 from Art Brod enclosing a proposed amendment to the Zoning Law including amendments to the Farmland Protection Overlay.
24. Minutes of Ag Advisory Committee October 24, 2003.
25. Minutes of Ag Advisory Committee October 30, 2003.
26. Publication of the Department of Agriculture and Markets dated March 23, 2004 entitled "Local Laws and Agricultural Districts: Guidance for Local Governments and Farmers."