

Introduction

Zoning is one of the key tools utilized to implement the vision set forth in a community master plan, protect community character, and maximize the return on public investments in infrastructure and to protect valued land and open space resources. For decades however zoning regulations have emphasized the development of land. As a result in many areas agriculture and agricultural lands times have been treated more as secondary and even transitory land uses. The prevailing practices in zoning tended to view agriculture as a useful activity pending the anticipated development of the land to its "highest and best use" and not as a valuable long term contributor to the local economy and quality of life in the community.

In recent year zoning philosophies have evolved to a point where agriculture and agricultural lands are community assets to be protected and supported in the same manner as residential, commercial, industrial and other types of land uses. Today more communities are embracing "ag-friendly" zoning to better promote the long term viability of their agricultural communities. In general this means reviewing and amending zoning regulations to provide for the wide variety of enterprises beyond tradition agricultural activities that farmers today may engage in, that recognize agriculture as a legitimate land use on par with residential and other land uses, and in high growth areas provide protection from development pressures.

Outside Homer village at the southern edge of the study area, the Town of Homer, Town of Preble and Town of Scott are predominantly rural communities, although the three municipalities do have scattered residential development, and are home to several small hamlets. Homer and Preble also host small scale second home development on the shores of several small lakes within their borders. Development pressure and loss of agricultural lands over the past two decades has been low- to moderate.

The following commentary is not a complete analysis of the Town of Homer, Town of Preble or Town of Scott regulations. Rather it looks at the potential implications with regard to its potential impacts to agriculture and agricultural enterprises in the three municipalities.

For the purpose of this report agriculture is defined as the use of land, buildings, structures, 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 or a hobby, and including commercial horse boarding operations as defined in the Agriculture and Markets Law Article (AML) 25-AA, Section 301. Historically agriculture has included a variety of disciplines aside from fruit, vegetable and crop production and livestock raised for food. In this report animal husbandry, or the breeding of specific animals for use or sale (e.g. race horses), beekeeping, aquaculture (fish production), horticulture and floriculture, including greenhouse operations, and silviculture, are all considered agricultural pursuits as well.

NYS Agriculture & Markets Law

Section 305-a of the New York State Agriculture and Markets Law (AML) provides farmers and agricultural operations located with State agricultural districts specific protections against local zoning regulation that may be unreasonably restrictive and cause undue interference with legitimate agricultural practices as defined by State law. Because many of the farms in the Town of Homer, Town of Preble and Town of Scott are located within state agricultural districts, they are afforded the protections against undue burdens imposed by local zoning regulations available through Section 305-a.

In 2002 Town Law Section 283-a was amended to require local governments to ensure that their laws, ordinances or other regulations that might apply to agricultural operations located in State certified agricultural districts do not "...unreasonably restrict or regulate farm operations in contravention of Article 25-AAA of the Agriculture and Markets Law, unless it can be shown that the public health or safety is threatened."

Municipal officials should consider when assessing their application of zoning regulations to agriculture such issues as:

- Do the regulations materially restrict the definition of farm, farming operations or agriculture in a manner that conflicts with the definition of "farm operation" as set forth in AML Sect. 301(11)
- Do the regulations materially limit or prohibit the production, preparation or marketing of any crop, livestock or livestock product?
- Are certain types of agriculture subject to more intensive review or permitting process than other types of agriculture?
- Is any agricultural activity that meets the definition of "farm operation" as set forth in AML Sect. 301(11) subject to special permit, site plan review or other local review standard above ministerial review, or subject to a more intensive level of review than other uses permitted within the same zoning district?
- Are farm operations treated under the local zoning regulations as integrated, interdependent uses and activities, or as independent, competing uses of the same property?
- Do the local zoning regulations relegate any farm operations located within a State agricultural district to the status as "nonconforming use?"

Upon the request of a farmer or municipal official the Department of Agriculture and Markets may review local land use regulations to assess whether a local law or ordinance is unreasonably restrictive on its face and whether it is unreasonably restrictive when applied to a particular agricultural practice. The Department must also assess whether the regulated activity also poses a threat to public health or safety.

If the Department of Agriculture and Markets determines that a local law or ordinance does impose an unreasonable burden on farm operations within a State agricultural district, it will notify the municipality of its findings. The Department will then work with municipal officials to bring the local regulations in line with the AML. If the issue cannot be resolved through negotiation the Commissioner is authorized under the law to bring an action against the municipality to enforce the provisions of Section 305-a.

Zoning in the Town of Homer - Overview

The Town of Homer has adopted zoning regulations designed to regulate the use of lands within the town and the height, number of stories and size of buildings and other structures, the percentage of occupancy of lots and parcels of land that may be occupied, and the density of population as authorized by NYS Town Law. The Town of Homer Zoning Ordinance establishes specific zoning districts and sets forth specific uses permitted in each district, as well as design and operating standard. The zoning ordinance has been amended and updated on a number of occasions since its original adoption.

The following commentary is not a complete analysis of the Town of Homer regulations. Rather it looks at the potential implications with regard to its potential impacts to agriculture and agricultural enterprises in the Town of Homer.

The Town of Homer is a predominantly rural community, but also includes within its boundaries the Village of Homer located on the Town's southerly border. The Town of Homer also borders on the northern boundary of Cortland and has experienced some suburban residential and commercial development due to its proximity to that city. This development is located primarily in the Rte 13 corridor east of Cortland and in the Rte 281 corridor in the village of Homer.

The population of the town in 2000 was 6,363 according to the U.S. Census of Population. Of this population however 3,368, or 53% of town residents, live in Homer village. According to the 2000 Census data there were some 2,603 housing units in the town in 2000, of which 56% were located in the village and 44% were located outside the village. Although the Town of Homer does have a small colony of cottages and seasonal homes on Little York Lake, these homes make up only about 25 of all homes in the town.

Although the Town of Homer has experienced some growth and residential development since 2000, growth does appear to be occurring at a slow to moderate pace.

The Zoning Ordinance divides the Town of Homer into six zoning districts:

Agricultural District;
Residence District;
Lakeside District;
Business District;
Light Industrial-1 District;
Light Industrial-2 District.

The Agricultural District is the largest district in the Town. The permitted uses within the Agricultural District listed in Section 402 of the zoning ordinance are:

- One and two-family residences;
- Farms, gardens, plant nurseries;
- Uses and structures customarily incidental to the use of the property for 1 or 2 family residences, farms, garden or plant nursery;
- Temporary roadside stands for the purpose of selling produce grown on the premises;
- Lodging for farm employees in NYS Agricultural Districts.

In addition to the permitted uses listed in Section 402 a number of uses that are allowed upon the granting of a conditional use permit are listed in Section 403. These are:

- Facilities which process agricultural products;
- Retail and wholesale sale of agricultural products;
- Home occupations or professions;
- Small service contractor (construction or service contractor employing fewer than 4 persons not resident relatives and engaged in plumbing, heating, electrical, landscaping, refrigeration, masonry, pest control or janitorial contracting;
- Hospital or sanitarium.

Section 404 lists standard yard setback requirements for front yards of not less than 30 feet; rear yard setback of not less than 30 feet and side yard setbacks of not less than 15 feet. In addition to these setbacks Section 404 E lists additional yard setbacks for certain agricultural structures:

- For any building housing farm animals, at least 100 feet from any adjoining residential property;
- No manure storage within 200 feet of any adjoining residential property;
- No liquid manure storage within 400 feet of any property line or within 100 feet of the centerline of any public roadway.

In the Residence District (Section 504) a farm is permitted, as is the keeping of domestic livestock other than household pets, but subject to a conditional use permit. In addition under Section 506(B) the following restrictions apply:

- Any building housing farm animals, shall be at least 100 feet from any lot line;
- No manure shall be spread or stored within 100 feet of any lot line;
- No sale of agricultural products except by permission of the Board of Appeals.

In the Lakeside District farms are not listed among the permitted uses, however greenhouses, gardens or plant nurseries are permitted but subject to a conditional use permit, as is the keeping of domestic livestock other than household pets.

Under Section 703 a farm, garden or plant nursery is permitted in the Business District, but subject to site plan approval. In the Light Industrial 1 (Section 802) and Light Industrial 2 (Section 902) zoning districts farm and garden implement stores are permitted subject to site plan approval, as are truck gardens, nurseries and farm produce sales.

In conclusion farms and agriculture or specific components or types of agriculture are permitted uses in one form or another in all zoning districts in the Town of Homer. However in all zoning districts where they are permitted agricultural operations appear to be restricted by specific setback requirements, or subject to special review through the site plan approval or conditional use review processes. Zoning requirements such as excessive setbacks and review processes can be burdensome to a farm enterprise and discourage farmers from investing in operations that can sustain their long term economic viability. Many of the restrictions appear to target agricultural operations in a manner that appears to subordinate agriculture to the interest of other land users, particularly non-farm residents.

Town of Homer - Conformance with NYS Agriculture & Markets Law

In the case of the Town of Homer there are a number of provisions in the Zoning Ordinance that appear to be in contravention with Section 305-a of the Agriculture & Markets Law. If these provisions of the zoning apply to agricultural operations located within a State certified agricultural districts then under Town Law Section 283-a the burden would be on the Town of Homer to prove that they are necessary to protect the public health safety and welfare.

The provisions in the Town of Homer zoning regulations that appear to be at issue are:

- Restriction on farmstands that limit them to temporary only and restrict the goods that can be sold;
- Additional setbacks of 100 to 400 feet for buildings housing farm animals or for manure storage and handling facilities;
- Requirements that a farm, garden or plant nursery receive site plan approval in the Business and light industrial districts;
- Requirements that farmers apply for and receive conditional approval for a number of activities such as the processing and sale of agricultural products that are considered integral to agriculture under Agriculture and Markets Law;

In land use and zoning practice the site plan approval process is applied to business, industrial or other properties that are open to the general public. The objective of municipal site plan review is to protect the general public that may enter the premises by applying accepted engineer and design standards and building codes to assure the safety of the public. Since the typical farm operation is not open to the general public, the application of site plan review and approval may constitute an unintended burden on some farms in the town.

Retaining the use of site plan approval for a limited number of agricultural enterprises, such as farm markets, greenhouses and nurseries, and other businesses that are open to the general public could be an appropriate zoning tool for the Town of Homer. The Town however should consider replacing the current generic "Retail and wholesale sale of agricultural products" language in the zoning ordinance with more specific descriptive language such as "farm market,"

"greenhouse," "grain, feed or seed dealership," etc. to better define those enterprises permitted on a farm, and subject to site plan approval.

Land uses subject to conditional use approval are traditionally land uses that due to their character and intensity may have significant adverse impacts on surrounding properties of the community in general. Such uses usually include high-traffic generators such as fast food restaurants, large-scale shopping centers, industrial complexes or institutional uses. The intent of conditional use review is to ensure that the potential impacts of such developments are mitigated through conditions set on the approval.

In general the several uses subject to conditional use in the Town of Homer are considered under the Agriculture and Markets Law to be legitimate agricultural pursuits. In general they would not qualify as intensive land uses with the potential for significant adverse impacts to surrounding land uses or to the community in general. The Town should reconsider the requirement for conditional use for such operations. In addition to bringing local zoning regulations into better alignment with Town Law Section 283-a and the Agriculture and Markets Law removing requirements for conditional use approval for these activities can send a positive message to the farm community: that agriculture is a valued land use and not a problem land use.

Town of Homer - Zoning Ordinance Definitions

The definitions list in the Town of Homer zoning ordinance as it applies to agriculture in the town is relative complete and clear with regard to terms that apply to agriculture. Clear and concise definitions for the following terms are provided:

- Agriculture;
- Agricultural activity;
- Animal husbandry;
- Animal hospital;
- Farm;
- Greenhouse;
- Home occupation; roadside stand;
- Junkyard;
- Private stable;
- Public stable

The Town however should consider a number of new definitions to better clarify its zoning regulations and permitted uses. Recommended additions to the list of definitions are:

- Agricultural products. There is a wide variety of products that may qualify as "agricultural products." They could include services or products principally utilized in agricultural production, equipment and structures used in support of agricultural or horticultural operations, agricultural equipment parts, batteries and tires, livestock, feed, seed, fertilizer, grain, fruit, produce, trees, shrubs, flowers or other products of agricultural operations. By creating a specific definition of what may constitute agricultural products the Town can distinguish between such items that might be for sale from the many unrelated goods that could be sold. A clear definition could also ensure that products that may not be considered traditional agricultural products by some, such as home baked goods, honey and maple syrup, would be included.
- Although the definition of junkyard adequately describes such operations the Department of Agriculture and Markets in its guidelines for local zoning includes as a legitimate agricultural practice the dismantling, storage and salvaging of farm machinery or vehicles not in running condition and the storage of such items on the premises. A slight modification to the Town of Homer junkyard definition to add "... except as accessory to a principal agricultural use of the premises." would bring the Town's zoning into conformance with Section 305-a of Agriculture and Markets Law.

Town of Homer - Other Recommendations for Changes

A small number of other changes are recommended to the Town of Homer zoning regulations. They include:

- Section 1306 should be amended to provide for a limited amount of signage in the Agricultural District. Currently there are no provisions for signs in that district with the exception of for house numbering, no trespassing or for political signs. There should be the opportunity for farm enterprises that are marketed to the general public, such as farm markets, to be able to clearly advertise their presence to the motoring public.

- Section 1307 (Storage and Dumping) should be amended to exempt farms located within the State agricultural districts.
- The Town may wish to consider adding campgrounds as a use permitted in the Agricultural District but subject to site plan review or conditional use permit review.

Zoning in the Town of Preble - Overview

The Town of Preble has adopted zoning regulations designed to regulate the use of lands within the town and the height, number of stories and size of buildings and other structures, the percentage of occupancy of lots and parcels of land that may be occupied, and the density of population as authorized by NYS Town Law. The Town of Preble Zoning Ordinance establishes specific zoning districts and sets forth specific uses permitted in each district, as well as design and operating standard. The zoning ordinance has been amended and updated on a number of occasions since its original adoption, with the current zoning ordinance adopted in 2008.

The following commentary is not a complete analysis of the Town of Preble regulations. Rather it looks at the potential implications with regard to its potential impacts to agriculture and agricultural enterprises in the Town of Preble.

The Town of Preble is a predominantly rural community, but with small residential resort communities centered on Upper Little York, Green, Song and Tully Lakes. The population of the town in 2000 was 1,582 according to the U.S. Census of Population. According to the 2000 Census data there were some 703 housing units in the town in 2000, of which 88 percent were occupied and 12 percent were vacant. Of the vacant homes 64, or about 73 percent of all vacant homes in the town, were identified as being "seasonal, recreational, or occasional use" dwellings. This is indicative of the presence of second- and summer homes along the lakes in the town.

Although the Town of Preble has experienced some growth and residential development since 2000, growth does appear to be occurring at a slow to moderate pace.

The Zoning Ordinance divides the Town of Preble into 5 conventional zoning districts, plus three overlay zoning districts. The three overlay zoning districts are the Zone A, Aquifer Protection District and the Wetland Protection Overlay District. These three districts acknowledge specific environmental resources that warrant additional protection. They implement specific additional regulations or restrictions on the use of land above and beyond those of the underlying zoning district.

The five zoning districts in the Town of Preble are:

- R1 - Residential;
- R1L - Residential Lake Side;
- AG - Agricultural;
- C - Commercial;
- I - Light Industrial;

In terms of geographical area the largest zoning district in the Town of Preble is the AG - Agricultural District, which covers approximately 87 percent of the town's land area. According to Section 521 of the zoning ordinance, the purpose of the AG - Agricultural zoning district is to: *"...protect agricultural lands and uses from incompatible land uses and to limit non-farm residential, commercial and industrial uses to those areas best suited by reason of their requirements for public services..."*

Under Section 522 the following uses are listed as permitted uses in the AG - Agricultural District:

- Agriculture and Agri-Business;
- Riding Stables;
- Poultry House;

In addition to the above land uses under Section 524 the following uses are also permitted in the AG - Agricultural District upon the grant of a conditional use permit by the Zoning Board of Appeals:

- Individual Manufactured Home;

- Home Occupations;
- Camp Grounds;
- Excavation and Mining; (except where prohibited, see Section 550)
- Farm Labor Camps;
- Kennels;
- Bed and Breakfast;
- Recreation Areas;
- Temporary Roadside Stand(Duration of permit as determined by Zoning Board of Appeals);
- One and Two Family Dwellings;
- Telecommunication Towers.

The other zoning districts relevant to agriculture in the Town of Preble are the R1- Residential District and the C - Commercial District. These two districts contain some actively farmed lands.

According to Section 501 the purpose of the zoning district is to:

"...provide a stable environment for residential development, free from incompatible uses..."

Agriculture is a permitted use within the R - Residential District, but as a conditional use. Also permitted with the grant of a conditional use permit are temporary roadside stands, with the duration of the permit set by the zoning board of appeals. The requirement that conditional use permits be obtain for activities that are considered to be legitimate agricultural activities under the Agriculture and Markets Law is generally considered to be an unreasonable burden on farm operations that located within a State agricultural district. However within the Town of Preble a relatively small amount of agricultural land appears to be located within the R - Residential District. This land may also be located outside the State agricultural district.

The purpose of the Commercial District according to Section 531 is to:

"... provide for business establishments serving the needs of area residents, especially retail and service businesses."

Agriculture is not listed as a permitted use in the C-Commercial District. As a result approximately 120 acres of land located on both sides of Rte 281 west of the I-81 interchange, and located between Rte 281 and I-81 south of Preble hamlet are actively farmed as a legal nonconforming use under current zoning. Development of any permanent improvements as part of an agricultural operation on these lands would require a zoning use variance.

Perhaps more importantly is that the amount of land zoned for commercial uses to the exclusion of agricultural uses may be excessive given the population of the Town of Preble and low to moderate potential for future growth. Generally smaller rural communities "overzone" for commercial development within their boundaries by zoning land for commercial development far above and beyond what their population can economically sustain, or even desire. Also the tendency is to zone extended lengths of highway or areas around interchanges for large scale commercial development.

This practice can result in commercial sprawl along main highways within the community that can detract from its rural character, unduly compete with historic businesses in hamlet center and encourage economically unsustainable businesses that may thrive for a few years but then close, leaving an empty shell building on the landscape. The practice can also communicate to farmers send a message that their operation is a transitory land use until the arrival of a "highest and best use." This can lead to disinvestment in land and buildings by farmers.

Some land for commercial development can and should be zoned as such, including some agricultural land. The Town of Preble however should consider reducing the size of its C - Commercial districts to an area that: 1) better reflects the potential for future commercial development in the town; and 2) reducing the size of individual C - Commercial districts to ensure that future commercial development is of a size and scale that the Town desires.

Town of Preble - Conformance with NYS Agriculture & Markets Law

In the case of the Town of Preble there are a number of provisions in the Zoning Law that may be in contravention with Section 305-a of the Agriculture & Markets Law. They are:

- Distinguishing "poultry house" from other types of agriculture in Sect. 522;

- Requiring that farm labor camps be subject to Conditional Permit review under Sect. 524, as well as the limit of one year on permit, and potentially excessive setback requirements as outlined in Sect. 707;
- Requiring that roadside stands be subject to Conditional Permit review under Sect. 524, and limits on the duration of a conditional use permit as determined by the Zoning Board of Appeals.

The requirement for obtaining special permits for activities that are considered to be legitimate agricultural activities under the Agriculture and Markets Law is generally considered to be an unreasonable burden on farm operations within a State agricultural district. The Agriculture and Markets Law clearly includes poultry and roadside stands as a legitimate agricultural pursuits or legitimate subsidiary activities. Hence requiring a conditional use permit as well as setting limits on the duration of their operations may be considered a contravention of Section 305-a.

Farm housing is also considered integral to agricultural operations in New York. Hence the Town of Preble zoning provisions that subject private farm labor camps operated as part of a larger agricultural enterprise to a conditional use permit approval process, and which set expirations on such approvals, may be considered a contravention of Section 305-a.

Town of Preble - Zoning Definitions

The definitions in Section 210 of the Town of Preble Zoning Ordinance pertaining to agriculture are relatively clear and concise. They include definitions for:

- **Agriculture.** The use of land for agricultural purposes including tilling of the soil, dairying, pasture, agriculture, arboriculture, horticulture, floriculture, viticulture, forestry, animal and poultry husbandry and the necessary accessory uses for packing or storing of products, provided that the operation of any such accessory uses shall be secondary to that of normal agricultural activities, and provided further that such uses shall not include the commercial feeding of garbage and offal to swine or other animals.

- Agricultural Business Establishment/Agri Business. A commercial activity characterized by the sale of agricultural products or a business engaged in performing agricultural, animal husbandry, or horticulture services on a fee or contract basis including corn shelling; hay baling and threshing; sorting, grading and packing fruits and vegetables for the grower; agricultural produce milling and processing; horticultural services; crop dusting; fruit picking; grain cleaning; land grading; harvesting and plowing.
- Farm Labor Camp - Private. A labor camp housing facilities, building or buildings in which people are housed who are employed in the individual farmer's personal farming operation.
- Farm Labor Camp - Commercial. Any structure or combination of structures designed or intended to be used for the housing of persons engaged in casual or per diem labor on a profit basis for farmers other than the owner of the camp.
- Junk Yard. Any area of land, including buildings thereon which is used primarily for the collecting, storage or sale of waste paper, rags, scrap metal or discarded material; or for the collecting, dismantling, storage or salvaging of machinery or vehicles that are not operable and/or not registered with the New York State Department of Motor Vehicles.
- Poultry House. The keeping of any number of poultry or chicken.
- Temporary Roadside Stands. The sale at a temporary roadside stand of farm produce or personal property exceeding a total of 72 hours during a calendar year provided that such stand shall not be closer than fifteen feet from the right-of-way line. Ample parking for customers shall be provided outside the boundaries of the adjacent road. Signs advertising the roadside stand are permitted on the site of the sale not to exceed sixteen square feet.

The Town of Preble includes in its list of permitted uses in the AG - Agricultural District "Riding Stables" but does not define the term. In addition the Town definition for agriculture does not explicitly include "commercial horse boarding" in the definition. Such operations are considered legitimate agricultural pursuits under Section 305-a of Agriculture and Markets Law. Providing a

definition for riding stables could provide useful clarity in the zoning and bring the regulations more in line with the state. Possible wording for such a definition could be:

Riding Stable. An agricultural enterprise boarding horses, regardless of ownership, for fee or other consideration and including the production for sale of crops, livestock, and livestock products as part of said operation.

Although the Town of Preble permits temporary roadside stands, and also agricultural business establishment (aka agribusinesses), it is not clear whether or not farm markets qualify as agricultural businesses and are thus permitted. The Town could thus consider revising the definition of agricultural business establishments or adding to its list of definitions a definition for farm market and included it under the list of permitted uses in Section 522.

A possible definition of farm market could be:

Farm Market. A permanent structure, with or without appurtenant open display area, from which agricultural produce and processed foods and baked good produced on the premises are sold and which may also contain facilities for the onsite preparation of processed foods comprised primarily of ingredients produced on the farm, such as a kitchen or bakery, as well as facilities for onsite consumption of such foods.

The above definition could include a maximum limit on square footage, as well as provisions for a limited amount of agriculture related products that could be sold to supplement the revenues generated by agricultural products.

The Department of Agriculture and Markets in its guidelines for local zoning includes as a legitimate agricultural practice the dismantling, storage and salvaging of farm machinery or vehicles not in running condition and storage of such items on the premises. Generally however such a practice qualifies as a "junkyard" under local zoning regulations. A slight modification to the Town of Preble definition of junkyard to add "... except as accessory to a principal agricultural use of the premises." would bring the Town's zoning into conformance with Section 305-a of Agriculture and Markets Law.

Zoning in the Town of Scott - Overview

The Town of Scott has zoning designed to regulate the use of lands within the town and the height, number of stories and size of buildings and other structures, the percentage of occupancy of lots and parcels of land that may be occupied, and the density of population as authorized by NYS Town Law. The Town of Scott Zoning Law establishes specific zoning districts and sets forth specific uses permitted in each district, as well as design and operating standard. The Zoning Law has been amended and updated on a number of occasions since its original adoption.

Zoning is one of the key tools utilized to implement the vision set forth in the master plan. The following commentary is not a complete analysis of the Zoning Law. Rather it looks at the potential implications with regard to its potential impacts to agriculture and agricultural enterprises in the Town of Scott.

The Town of Scott is a rural community. The population of the town in 2000 was 1,193 according to the 2000 U.S. Census of Population. According to the 2000 Census data there were some 478 housing units in the town in 2000, of which 87 percent were occupied and 13 percent were vacant. Of the vacant homes 39, or about 65 percent of all vacant homes in the town, were identified as being "seasonal, recreational, or occasional use" dwellings.

Although the Town of Scott has experienced some growth and residential development since 2000, overall this growth appears to be occurring at a slow to moderate pace.

The Zoning Law divides the Town of Scott into eight (8) types of zoning districts:

AGR	Agriculture District;
R-1	Residential District 1;
B-1	Business District;
FW	Floodway District
PDD-R	Planned Development District - Residential
PDD-C	Planned Development District - Commercial
PDD-I	Planned Development District - Industrial

In addition to the above described mapped zoning districts, the Town of Scott Zoning Law has provisions for the establishment of Planned Development Districts (PDD) within the town. The objective of the Planned Development District is to permit specific land uses not necessarily permitted under the existing zoning to be developed together on a single parcel of land as part of a unified plan of development.

Uses with each district are further broken down into uses permitted by right and uses permitted upon the granting of a Special Permit from the Board of Appeals.

According to Section 8.1 of the Zoning Law, the purpose of the AGR - Agricultural zoning district is to:

"...provide for areas within the Town of Scott where the living environment associated with agriculture, forestry and similar activities can be preserved and/or where the development of such an environment is in harmony with the district."

Under Section 8.2 the following uses are listed as permitted uses in the AGR Agricultural District:

- Single-family dwelling units;
- Two-family dwelling units;
- Farm and farm uses;
- Roadside stands (temporary only per Sect.8.6);
- Seasonal dwellings.

In addition to the above land uses, the following uses are also permitted in the AGR Agricultural District upon the grant of a special permit by the Zoning Board of Appeals:

- Customary home occupations;
- Not more than two additional dwellings per farm to house farm laborers or migrant workers or relatives who derive more than 50 percent of their income from the farm;
- Riding academies and boarding stables;
- Mobile home parks.

The other zoning district relevant to agriculture in the Town of Scott is the R-1 Residential District-1. Under Section 9.2 the following uses are listed as permitted uses in the R-1 Residential District-1:

- Single-family dwelling units;
- Two-family dwelling units;
- Farm and farm uses;

Section 9.3 lists "customary home occupations" as being permitted upon grant of a special permit by the Zoning Board of Appeals.

Town of Scott - Conformance with NYS Agriculture & Markets Law

In the case of the Town of Scott there are a number of provisions in the Zoning Law that may be in contravention with Section 305-a of the Agriculture & Markets Law. They are:

- Section 8.3(d) requires that a special permit be granted for farm worker housing, and that no more than 2 additional dwellings for farm workers be permitted on a parcel of land;
- Section 8.3(i) requires that a special permit be granted for riding academies and boarding stables;
- Section 8.4.6(3) requires that any building that houses farm animals shall be at least 100 feet from any lot line;
- Section 8.4.6(4) requires that any structure housing more than 200 chickens or other fowl be located at least 300 feet from any lot line, or 100 feet from any road right-of-way;
- Section 8.5 requires that any storage of manure shall not occur within 100 feet of any lot line;
- In 1990 the Town of Scott adopted an amendment to the Zoning Law that prohibited the siting of single- or double-wide manufactured homes in the AGR District.

The requirement for obtaining special permits for activities that are considered to be legitimate agricultural activities under the Agriculture and Markets Law is generally considered to be an unreasonable burden on farm operations within a State agricultural district. The law also explicitly includes as a legitimate agricultural activity "commercial horse boarding" operations. Farm housing is also considered integral to agricultural operations in New York. Hence

subjecting these two activities to the special permit approval process may be considered a contravention of Section 305-a.

A recent New York Appeals Court decision has also confirmed a Commissioner of Agriculture and Markets determination that the prohibition on the use of manufactured homes for farm worker housing can be considered an unreasonable burden on a farm operation in a State agricultural district. The 1990 amendment to the Zoning Law prohibiting manufactured homes in the AGR District should thus be reviewed.

The additional setback requirements for a number of legitimate agricultural facilities or activities listed in Sections 8.4 and 8.5 of the Zoning Law may be considered unreasonable burdens on farm operations for a number of reasons. The first is that there does not appear to be any rationale for such additional setback requirements stated in the zoning law. The Zoning Law does not provide any documentation of unique issues or problems that might be associated with the activities, or any evidence that the restrictions address a public health or safety issue.

Moreover barns and other farm buildings have historically been located within 100 feet of road rights-of-way and other property boundaries. As a result there are a substantial number of farmsteads in the Town of Scott where such buildings or activities take place well within the required setbacks. Although such buildings may be grandfathered as legal nonconforming uses under the Town zoning regulations, any improvements to the facilities may be subject to not only potentially burdensome special permit approval process, but also the grant of a zoning variance.

Town of Scott - Zoning Law Definitions

Definitions are a critical component of any set of zoning regulations. The Town of Scott Zoning law has a number of definitions that pertain to agriculture and agricultural operations. They include:

- Animal harboring. Keeping of more than 3 dogs, 5 cats or any number of horses, cattle, sheep, goats, rabbits, pigs, or other customary farm animal, or animals customarily kept in zoos, or the keeping of any animals for sale or hire on a lot size of 2 acres or less.

- Farm, Full Time. Any parcel of land in excess of 20 acres and used principally for the raising of agricultural products or keeping of poultry, fowl, livestock or domestic animals, including necessary farm structures and storage of farm equipment.
- Farming, Farm Use or Occupancy. Any activity customarily carried on upon a farm, such as cultivation of land and animal husbandry.
- Farm Pond. As distinguished from a swimming pool - any standing body of water used for the purpose of watering livestock, fish pond or wildlife marsh.
- Industrial Agricultural Enterprise. Use of land, buildings and structures for the intensive feeding of animals or fowl, carried on as an industry where less than 10 percent of all food and bedding for the animals or fowl is grown on the premises.

The above definitions raise a number of issues. The list of permitted uses in the AGR and R-1 districts include "farms and farm uses" in their respective list of permitted land uses. The definition of what constitutes a "farm" however is not given. In particular although definitions for "farm, full time" and "industrial agricultural enterprise" are given, neither use is explicitly permitted in either of the two zoning districts. Moreover the definitions of "farm, full time" and "industrial agricultural enterprise," may themselves lead to confusion and possible conflicts over interpretation.

The concept of "full-time" is a term utilized in wage employment and generally implies a person's primary job or occupation. The definition could thus be reasonably interpreted to exclude farm operations where one or more owners or operators may have a job off the farm. In addition setting a minimum area of 20 acres can preclude many legitimate agricultural operations that occur are much smaller parcels of land.

Although it is not actually found elsewhere in the Zoning Law, the definition for "industrial agricultural operation" could be applied to many contemporary agricultural operations agricultural operations in the town and Cortland County. The definition itself leaves open for interpretation terms such as "intensive feeding," "industry," and, given that many farm operations are now spread over several tracts of land, the term "premises."

A possible resolution of the issues created by the existing definitions, as well as lack of certain definitions, would be to replace the terms "animal harboring," "farm, full time," "farming, farm use or occupancy" and "industrial agricultural enterprise" with a definition for "agriculture."

An example of a definition of agriculture is:

"The use of land, buildings, structures, including greenhouse structures, and equipment, and the practices which support the production, preparation, marketing and transportation of grain, vegetable, fruit, and other crops, horticultural and floricultural products, animal husbandry, livestock and livestock products."

This definition provides a clear and concise definition of what would constitute an agricultural operation, but provides considerable flexibility that accommodates wide variety of activities generally recognized as being "agriculture" in New York, and the constantly evolving nature of agriculture and agricultural practices. It can also ensure some flexibility in the future to accommodate the changing nature and increasing diversity of agriculture. Use of "agriculture" as an umbrella term also takes into account not merely the specific activities set forth in the several definitions currently used by the Town of Scott, but also the multiple structures and subordinate activities that contemporary American agriculture encompasses. The definition would include facilities such as farm ponds, eliminating the need for that definition.

Other suggestions for new definitions are: farm labor housing; roadside stands; and riding academies and boarding stables. Definitions for these terms would help clarify the intent of the zoning regulations and help ensure consistent interpretation and application of the regulations.

Town of Scott - Other Recommendations for Changes

In addition to replacing the "Farms and farm uses" category in Section 8.2 and Section 9.2 with "Agriculture" as defined above, a number of other changes to the Town of Scott Zoning Law are recommended. These changes are:

- Revise Section 8.1, Purpose and Intent, to better emphasize the intention of the Town of Scott to promote its agricultural sector. As written the statement emphasizes a desire to protect a "living environment associated with agriculture" without a clear explanation of what such an environment might be.

- Revise Section 8.2 to permit riding academies and boarding stables as permitted uses in the AGR zoning district and remove the use from Section 8.3 - Uses Permitted by Special Permit. This type of land use is considered a legitimate agricultural pursuit under Section 305-a of the Agriculture and Markets Law, and is also generally considered compatible with agricultural operations.
- Revise Section 8.3 to permit in the AGR zoning district to permit with the grant of a special permit "agricultural support enterprises." These types of businesses are designed to supplement the revenues of an active farm operation by providing services or products principally utilized in agriculture or by farmers in support of their day-to-day operations. They are business enterprises that are secondary to a larger farm operation, as outlined in more detail below.
- Revised Section 8.3 to permit in the AGR zoning district with the grant of a special permit "agricultural tourism enterprises." These types of businesses are designed to supplement the revenues of an active farm operation by providing recreational and educational activities for the general public, as outlined in more detail below.
- Revise Section 8.4.6 to include as an accessory use "farm labor housing" as defined in an attendant new definition in the definitions section and delete Section 8.3(d). Because the definition for farm labor housing would include manufactured housing limited to use by farm laborers, it would also protect the Town from the uncontrolled spread of such housing. As an accessory use, farm labor housing could also only occur on land actively used in agriculture.
- Revise Section 8.6 to eliminate the restriction that limits the stand being a temporary structure (with no elaboration of what is meant by of "temporary") and to the sale of produce grown on the premises only. These limitations may be unduly restrictive in that they could be interpreted to preclude sale of process foodstuffs such as jams and jellies, baked goods and products such as honey or maple syrup. Prohibition on the

sale of produce grown elsewhere may also curtail the quantity and variety of produce available for sale and, moreover, preclude the opportunity for farms on side roads with little traffic from growing selling produce to the public via another farm's stand. Rather than setting limits the products sold, the Town of Scott should consider limits on the size of such stands as a means of controlling their potential impacts.

The rationale for recommending that the Town of Scott consider revising Section 8.1 is that across the state towns are recognizing that zoning has traditionally relegated agriculture to secondary status compared to other land uses such as non-farm residential, commercial and industrial development. Agriculture to a certain extent has been viewed as a transitory land use, to be replaced at some point in the future with a "highest and best use."

Agricultural zoning districts as a result are being viewed in the same manner as residential, commercial and industrial districts in that town governments are promoting agriculture, as a land use category to be the pre-eminent land use within the district. Unlike strictly residential, commercial or industrial zoning districts, agricultural zoning district can still accommodate compatible land uses such as residential development and recreational uses such as golf courses.

An example of such purpose or intent statement is:

"The general purpose and intent of the AGR-Agricultural district is to protect the agricultural land resources and rural agrarian character of the Town of Scott, to promote, as much as possible, the continued economic and operational viability of agricultural enterprises in the Town of Scott, and to provide opportunities for rural residential and other compatible development within an agricultural environment."

Agriculture today has evolved in a manner where many farms have diversified their income sources, in some case through side businesses designed to generate supplemental revenues to support the overall income stream. The businesses can be seed, fertilizer, equipment or other dealership, farm service business or a direct marketing operation such as a farm stand. Agri-tourism has stimulated the development of businesses as diverse as bed and breakfast inns, wineries and corn mazes or other seasonal attractions on the farm.

In many municipalities zoning however has not kept up with this aspect of the changing nature of agriculture. In some cases these on-farm businesses are quietly tolerated although they may not conform to local zoning regulations, or they may be treated as "customary home operations" although the business may not conform to the zoning definition for such businesses. In other cases they are permitted by the zoning, but without adequate regulations to control possible adverse impacts of such businesses.

The Town of Scott should consider adding agricultural support enterprises as a use allowed by special permit in its zoning regulations. This will permit farmers in the Town of Scott to diversify their operations and take advantage of new markets for their goods and services. Because these types of businesses are open to the general public the Town should consider subjecting such enterprises to a site plan approval process. Site plan approval is a mechanism by which a municipality can ensure that the health and safety of the general public and patrons of such businesses are protected; ensure that adequate facilities for parking and safe ingress and egress from public highways are provided, and that potential adverse impacts of such businesses or large events are mitigated.

An example of a definition for agricultural support enterprises, from the Town of Ulysses in Tompkins County, is:

" A retail or wholesale enterprise operated as an accessory use to an active farm on the same premises providing services or products principally utilized in agricultural production, including structures, agricultural equipment and agricultural equipment parts, batteries and tires, livestock, feed, seed, fertilizer and equipment repairs, or providing for wholesale or retail sale of grain, fruit, produce, trees, shrubs, flowers or other products of agricultural operations."

In addition to the above definition the Town of Ulysses also has specific standards that apply to such businesses. They include:

- Additional setback requirements, particularly when such businesses are close to residential zoning districts (200 feet for a business that involves farm equipment repair or fabrication or other activity that generates noise);
- Standards for parking facilities, including minimum setback requirements, number of spaces and design;
- Standards for outdoor lighting fixtures and signs;

- Standards for landscape buffers between such businesses and adjoin residential zoning districts;
- A limit on the number of employees permitted - as a mechanism for controlling the size and scale of such an enterprise to ensure it does not outgrow the farm operation or evolve into a major commercial or industrial enterprise.

In addition to traditional agricultural activities the Town of Scott also permits "agritourism" which is defined as *"corn mazes, agricultural educational venues, hay rides and other assorted agriculture-associated activities that occur on an ongoing basis."*

In many areas agritourism is a growing and important component of an overall direct marketing strategy for an active agricultural operation or farm market, and important source of supplemental income for farms. The above definition is crafted in a manner both describes the activities envisioned as part of an agritourism enterprise, protects the town from unanticipated ones, but permits some flexibility in interpretation. It does however leave out an activity that is commonly found in agritourism, which is the sale of prepared foods, generally from ingredients produced on the farm.

The definition also does not limit agritourism enterprises to being a component of an overall farm operation or place limits on size or scale of the enterprise. The zoning may be interpreted to permit anybody engage in agritourism, on or off the farm. This may open the Town up to strictly commercial tourism operations that may not be appropriate or compatible with the agrarian and rural character that the Town of Scott wishes to maintain.

Agritourism operations are designed to attract the general public. They also have the potential to grow into major businesses that may attract large numbers of people and heavy traffic, particularly for occasional special events. Site plan approval is a mechanism by which a municipality can ensure that the health and safety of the general public and patrons of such businesses are protected; ensure that adequate facilities for parking and safe ingress and egress from public highways are provided, and that potential adverse impacts of such businesses or large events are mitigated. The Town of Scott may wish to revise the Land Use Law to require site plan approval for agritourism.