

Farming Fake Crisis

On March 6, the town board voted 4-1 (supervisor McMurry being the only dissenting vote), that a letter be sent to about two dozen residents who had previously been issued a noncommercial farm animal permit under town law, BUT whose property was now located in a county agricultural district. The letter would require the landowner to confirm to the town whether they are exempt from the town's livestock licensing law since they operate a commercial farm enterprise on their property, or whether they must still comply with the town's livestock law since they are NOT keeping livestock for commercial purposes. Noncommercial farm animal uses include "backyard chickens" for personal egg consumption and horses kept for personal use.

Grand Island Town Code §407-144 -- Agricultural animals [<http://ecode360.com/11853417>] says:
"The keeping for NONCOMMERCIAL purposes of up to 10 agricultural animals may be permitted with an agricultural animal permit in the R-1A District and with an agricultural animal special use permit in R-1B and R-1C and R-1D Districts provided that... B. The barn and grazing area is located at least 200 feet from any neighboring residence and at least 100 feet from the applicant's personal residence."

On March 7, after Supervisor McMurray did not get his way with the town board, he created a fake crisis on his facebook page by claiming that all farming on the Island was under attack by the four town board members who voted that town law must be complied with until it is changed. McMurray went on to misrepresent state and town law in his rant. As has become typical, this fake crisis was meant to agitate those who are ignorant about the law, and use them as an angry mob to get the their way. Angry mobs never solve problems.

Here is what the supervisor said:

<https://www.facebook.com/supervisornate/posts/1461572537188827>

"If you are in a Agricultural District, doesn't that automatically mean that you are a farm? I'd say so. So I made that point (and many other points) to try and stop the Town from going down this road. Sadly, (after weeks of trying) I was unsuccessful. I Was The Only Town Board Member Who Voted "No." I was the only town board member to vote against requiring special use permits for farming in Ag Districts."

Being in an agricultural district does NOT automatically mean that you are a farm. It only means that you have land that is highly suitable for a commercial farm operation. The supervisor was the only town board member to vote that if you are in an Ag district you can do anything you want, violate town law whenever they want, and neighboring landowners have no protection under town law. The supervisor does NOT want to require any "farm" to comply with state law by demonstrating that they are a commercial operation. Yes, the burden is on the farm to prove that they are a farm operation. That is a state law requirement. If the supervisor does not like that legal requirement, he should speak to state legislators about changing the law, rather than mislead and misrepresent state and town law requirements.

McMurray's free-for-all push is giant step backwards that can only hurt all the great farming things on the Island. State and town laws exist for a reason -- to protect residents. I am all against over-regulation, but these people just want NO regulation, and that is not reasonable either.

So now, there will be yet another hearing on this matter, on Monday March 20 at 8 PM by the town board. And the angry misinformed mob will descend on town hall with their "No Farms No Food" signs to pressure town board members, in spite of the fact that commercial farms on the Island were never under attack by any town board members.

Here are the undisputed facts:

(1) Many property owners on Grand Island requested that their land be included in an Erie County agricultural district. The Ag district application process is controlled by state law, not by Grand Island Town law. The state law about getting into an Ag district is Agriculture and Markets Law section 303-b, and it says:

"1. The legislative body of any county containing a certified agricultural district shall designate an annual thirty-day period within which a land owner may submit to such body a request for inclusion of land which is predominantly viable agricultural land within a certified agricultural district prior to the county established review period...

a. refer such request or requests to the county agricultural and farmland protection board, which shall, within thirty days report to the county legislative body its recommendations as to whether the land to be included in the agricultural district consists predominantly of "viable agricultural land" as defined in subdivision seven of section three hundred one of this article and the inclusion of such land would serve the public interest by assisting in maintaining a viable agricultural industry within the district..."

Agriculture and Markets law section 301, says:

"7. "Viable agricultural land" means land highly suitable for a farm operation as defined in this section.

11. "Farm operation" means the land and on-farm buildings, equipment, manure processing and handling facilities, and practices which contribute to the production, preparation and marketing of crops, livestock and livestock products as a commercial enterprise..."

NOTE: To get into the Ag district, the landowner only has to prove that they have land that is "highly suitable for a farm operation." They DO NOT have to prove that a farm operation, defined by Agriculture and Markets Law section 301(11) as a "commercial enterprise," actually exists on their land. In other words, getting into an Ag district does not automatically prove you have a farm operation run as a commercial enterprise on your land.

(2) The Erie County Legislature approved many of the Grand Island Ag district applications. There are now several hundred acres on the Island that are in the Ag district. That is a good thing that preserves the "rural character" of Grand Island by protecting usable farm land. The county also rejected many applications. The properties and their application forms are all listed on Erie County's web site here:

http://www.grand-island.ny.us/business/town_boards/index.php

<http://www2.erie.gov/environment/sites/www2.erie.gov.environment/files/uploads/303B-2016-ReportToLeg.pdf>

<http://www2.erie.gov/environment/sites/www2.erie.gov.environment/files/uploads/APPLICATIONS%20AND%20MAPS%20Combined.compressed.pdf>

Among those properties just included in the Ag district, one applicant has four slivers of property that are only 0.17 acres each, they have no income, and they claim they are only going to farm half the land.

(3) Grand Island Code section 407-144 requires anyone who wants to keep farm animals for NONCOMMERCIAL purposes to first obtain a permit.

NOTE: This section of town code obviously DOES NOT apply to an actual "farm operation" COMMERCIAL enterprise located in an Ag district, since the town code only regulates NONCOMMERCIAL keeping of farm animals.

The town issued about two dozen of these 407-144 noncommercial farm animal permits.

(4) Some of the people who were issued a town code 407-144 NONCOMMERCIAL farm animal permit got into the Ag district. Now they are claiming that since they got into the Ag district, they are automatically exempt

from town law 407-144 even if they are NOT keeping farm animals for commercial use, and do not need to comply with the health and safety provision about side-yard setback requirements. They are that they can do anything they want on their property because they are in the Ag district, and town law does not apply to them.

(5) If anyone who owns land in an Ag district on the Island thinks Town Code 407-144 is unreasonably restrictive, they can file a Agriculture and Markets law section 305-a complaint with the NY Department of Agriculture and Markets and get a binding determination. The state's guidelines make it clear that "Only farm operations are protected by Section 305-a" of the Agriculture and Markets law. meaning that you have to be a commercial enterprise and not a part-time hobby farmer:

https://www.dos.ny.gov/lg/publications/Local_Laws_and_Agricultural_Districts.pdf

The 305-a application form in the state guidebook makes it very clear that Ag district protections ONLY apply to commercial farm operations. The 305-a Review form in the guidebook specifically requires that a farm questionnaire be completed if the farm does not qualify for an agricultural assessment by having \$10,000 in income. The application also asks about the "type of enterprise" and its "annual gross income." The state Ag district questionnaire states: "In determining whether the operation constitutes a "farm operation," the Department evaluates such factors as the acreage in production; capital investment; gross sales of crops, livestock and livestock products; the type of enterprise and number of years in operation. The Department will consider your answers to the following questions in conjunction with your §305-a Review Application to determine if your enterprise constitutes a "farm operation."

Most of the angry mob clamoring around town hall are NOT commercial farmers who keep livestock, and are therefore required to comply with Town Code 407-144 by getting a farm animal permit to keep their pet animals. They just don't want to, and claim to be above the law. So if you support farms but also support state and town laws that protect residents from nuisances that out-of-control neighbors can cause, then contact town board members to let them know how you feel:

http://www.grand-island.ny.us/business/town_boards/index.php

Fran Reit