

**Presentation by Dr. Bob Somers, New York State Agriculture and Markets**  
**August 13, 2014**  
**Dryden Neptune Fire Hall**

**Chairman Evan Carpenter introduced Dr. Bob Somers and thanked the various board and commission members for attending.**

**Below is a synopsis of Dr. Somers presentation followed by questions and answers:**

Agricultural Districts Law is one of the first in the nation to develop a comprehensive program to protect farm operations. There are 8.6 million acres of land in agricultural districts encompassing about 26,000 farms in New York State. The interesting fact about NYS law, it is a state law that provides the protections but it is the local initiative that creates the agricultural districts. The Ag district starts with the landowner requesting the county legislative body to include their property into an Ag district.

The visionaries, many from Cornell University in the late 1960s, worked with Governor Rockefeller to find ways to stem conversion of agricultural land to non-agricultural uses. They came up with the idea of a body of laws to protect farm operations as long as they want to remain in agricultural production. The best thing they did was to allow the creation and maintenance of districts with ways to add land or exclude land. Those discussions were left to the local individuals, the people most connected to their land in the community.

When the State comes in, looks at a local law and says that it is unreasonable restrictive, it is incumbent on you, the land owner, to participate in the agricultural district process. Public hearings are required from the County legislative body, municipalities that are affected in a review of an agricultural district are notified and all of those people should be talking and working with the County Ag Farmland Protection Board and the County Legislative body to discuss your vision of agriculture in Tompkins County. What is your vision of agriculture in Dryden? Does it coexist with local zoning and infrastructure? How fast can you, as a community, protect farmland? These are things that should be made known to the legislative body when they create or modify an agricultural district. The county legislative body also has the power to terminate a district. They have a lot of power and authority over how agricultural districts look within a community because when an agricultural district is designated and there are a collection of properties within the districts, there are a number of benefits afforded to those properties. There are counties whose vision is to have the agricultural districts be a community. They put in land that is currently not farmed but it could be farmed. There are other counties where they only put land in active production in the agricultural districts. There isn't a right way or a wrong way to do it.

If you are in an agricultural district but you are not a farm operation, you don't receive any benefits or penalties. If you are a farm operation, you are afforded a number of benefits including agricultural assessment and protection from unreasonably restrictive local regulations. This is a home rule state and the legislature has placed on state, towns and villages the same requirement found in section 305A. Local government shall not unreasonably regulate farm operations in an agricultural district unless they

can show that the farm operation is a threat to public health and safety. Towns create their own land use regulations; it is difficult for a landowner to overcome local land use law unless they are in an agricultural district. If a landowner petitions the department regarding a local law, in which the enactment or enforcement thereof, is unreasonably restrictive to the farm operation, the landowner can request a review from the department. The department conducts a review of the local law, reaches out to the affected municipality and landowner, tries to look for compromises, and an understanding of the concern from the municipal, residential or agriculture level. Are there ways to mediate or mitigate any adverse effects?

Ag and Markets rely upon a lot of local resources, the soil and water conservation district, cooperative extension personnel, USDA, natural resources conservation services, and professionals within the county. They also look at the state agencies for guidance as they regulate bio-solids, drinking water, erosion, and storm water.

Farmers in an Agricultural district have limited protections from eminent domain and condemnation.

- Municipalities that construct or advance funds to construct water or sewer facilities, residential facilities, drainage districts and other actions that require filing a notice with the department will then be reviewed for the impact on agriculture. This is a precursor to SEQR and examines the affect of those utilities on the conversion or potential conversion of farmland to non-ag uses. The municipalities are limited in rates and fees associated with water and sewer extensions.
- If you have a farm operation in an agricultural district you will get notified if an adjacent land owner is appearing before the planning board or ZBA for a use variance, area variance, site plan review, special use permit, or subdivision.
- If you are selling land in an agricultural district, prior to signing a contract with the prospective buyer, the buyer has to receive the disclosure statement that their purchasing land in a county agricultural district which may be subject to noise, odor, long work days and restriction on the extension of water and sewer facilities to your property.

In 1971, an agricultural protection law was passed at the state level.

In the late 1960s, an amendment to the NYS Constitution stated that agriculture is a preferred land use in the state and the state is going to do everything that we can to protect that land resource base now and into the future. The State legislature was charged to develop a comprehensive state law that would help foster the constitutional amendment. Often towns ask the Ag Protection Board to review their local laws and zoning to ensure that they are consistent with the Ag Districts law. These are non-binding reviews although they provide their comments to the municipality. The only time their review is binding is when they look at a local law as it affects a farm operation. A farmer has to request a review from the department. When that occurs, the first thing is to send a letter to the mayor or town supervisor to let them know that a farmer has asked them to review the local law, what the department is going to examine and how it affects the farm operations. In upstate and central NY there have not been a lot of issues. The ones Dr. Somers is involved with are adjacent to the urban fringe areas.

### **Myths of farming:**

- Farmers or a farm operation in an agricultural district don't have to comply with local zoning or don't need a building permit.

That is incorrect. Everyone in the municipality has to comply with zoning laws. Farmers have to obtain a building permit if a permit is required for agricultural structures. As a farm operation, farmers have the ability to request a review from the department but they have to comply with the local law. Farmers are not exempt from everything/anything.

They also have individuals that have farm buildings that have to undergo SEQR, have a site plan review, or request a special use permit. Local law has a hard time keeping up with the changes to the state law, there are changes almost every year.

An important section of any land use regulation is the definitions. Municipalities need to spend time on the definition of everything that is in the zoning code and particularly how they define farm and farm operations. State law protects the production, preparation, and marketing of crops, livestock and live stock products as a commercial enterprise. Some laws require that you have a minimum amount of land to be in an agricultural district but the state law does not have a minimum farm acreage. It is whether or not the farm is a commercial enterprise. There have been amendments to the state definition of farming to add timber operations, commercial horse boarding, commercial equine, compost, biomass and mulch.

### **The process of reviewing local laws:**

- The department receives a request from a landowner who feels a local law is unreasonably restrictive
- The department does the research to ensure the landowner is in an agricultural district. Did they receive an agricultural assessment? They look at aerial imagery over time, and consider the surrounding land use.
- The department will send a letter to the municipality asking them to contact the Ag Protection Board.
- Next is a substantive review which is detailed review of the farm operation and the practices that are being regulated.
- They then send a comprehensive letter to the municipality stating what the department reviewed, what they found, what the municipal zoning law states, what the department believes is unreasonable for the farm operation, and what things the municipality can do to accomplish the same degree of regulation without being restrictive with regard to its application to farm operations. The department asks for a response from the municipality within 30 days.
- If the municipality fails to respond or cannot show that there is a threat to public safety and health, the third letter states the department finished their review and what they found. If the municipality doesn't allow the activity in question, then the department might take legal action to enforce the Ag and Markets law.

- In the case of a failure to come to an agreement, the Commissioner will issue a determination and order. This will include the chronological, step by step process the department went through, the response from the municipality, and what the commissioner's action. The commissioner will give the municipality 20 days to comply or sue the department.
- If necessary, a lawsuit will be filed with the State Supreme Court. Lawsuits very rarely occur. Most of the time, the department is able to work with the farmer and the municipality to come to an agreement.
- In Dryden, some activities in zoning require special use permits. The Agricultural Protection Board has always taken the stance that farming on land in an ag district is not a special use and should be a permitted use regardless of the zoning district it is in.
- The department understands that Towns want to ensure set back requirements (or other requirements) are being adhered to.
- There are a number of guidance documents on the Ag and Markets website.

### Questions:

Q. Do wind and solar farms where the product is energy count under Ag and Markets prevue?

A. No – there is conflicting language – solar “farms” and wind “farms” – they are industrial, depending upon what the output is, they could be regulated by the public service commission. The state liquor authority chose to use a farm designation – farm distillery, farm winery, farm brewery and farm cidery. They may or may not be a farm operation under the Ag and Markets law. Ag and Markets law is a production oriented law so a majority of the ingredient or the crops sold have to be raised by the farmer.

Q. If a farmer with an agricultural operation claims that a law is unreasonable and Ag and Markets agree, does the decision apply only to that case or is it blanket wide to any ag operation in the Town?

A. The decisions are case by case because every farmer does things differently. There were two camps when the Ag Districts Law was created – one that wanted a cook book like you see from USDA Natural Resources Conservation Service; they have a whole set of guidelines that you have to follow from a-z to be a best management practice. The other camp argued that farmers are creative and they don't all do things the same way. Everything is on a case by case basis. There are general guidelines in use that have been published.

Q. If the Town is *proposing* laws that are going to be very restrictive, would the department get involved or does the law have to already be on the books?

A. Enactment and enforcement are both areas that can be reviewed. If a farmer is not affected but it affects all of the farms in the community, then the department can do a generic review and inform a municipality of the issue as well as its level of restrictiveness. If it is unreasonably restrictive, then the department has to wait for a farmer to demonstrate where the law is going to restrictive and then the

department can go to a binding review. A farmer has to be involved or Ag and Markets cannot get involved.

Q. Returning to the solar and wind farm questions and using Tug Hill as an example, that wind farm is surrounded by dairy. Most of that is leased land. Are the farmers are protected by the ag law?

A. There is a provision in the ag and markets law that says the land that is taken up by the wind generating facility is not a conversion. Oil, gas and wind are exempt from conversion. If it takes an acre of land out of production, the farmer doesn't have to pay taxes on that property.

Q. What would be the significance of non agriculture properties in an agriculture district? Why would they be there?

A. Lots of times it is a long standing issue – When the ag district was formed, the farmland protection board said where most of the farms are and then they drew big lines around it, usually depending on a transportation based map. There is no way to determine if all the land is ag or not. Now most counties have tax mapping and they have a designated code indicating whether the parcel has an ag assessment.

Monika Roth reminded everyone that every eight years, they meet with the local planning boards to determine which parcels are ag land. She added that most of our farmland is rented land. If we only included the active farms, we would miss the rented ag land.

Q. Can a commercial composting operation get designation as a farm?

A. Not a commercial operation – if they are a farm, then Ag and Markets can step in. A compost pile that is used on the farm is protected and a farmer can sell it if the product is from their own animals. However, if it has added material – chips or leaves – you can only use it on your own property.

Q. Is rented land protected? Who is responsible to bring an issue to Ag and Markets, the farmer renting the land or the land owner?

A. The land has to be in an ag district and the definition of farm operation says that it is land that is owned or rented contiguous or noncontiguous to one another. It allows a farmer to rent land and, as long as it is in an ag district, then Ag and Markets can protect the farmer's activities on the rented land.

Q. The farmer that is doing the farming is the one that would come to Ag and Markets?

A. Yes.

Q. Have you done a generic review of the Dryden zoning for its compliance with Ag and Markets? Wondering where the Town of Dryden is in terms of it's attempt to line up Dryden zoning with Ag and Markets?

A. Evan Carpenter replied that the Ag Committee has submitted recommended changes but that we have not yet received a response. Dr. Somers said he has not yet gotten to the review.

Q. If a municipality has defined ag districts, what are the most effective tools to maintain the acreage or to increase the acreage in ag districts?

A. The only way that you are going to keep land in production is to keep the farmers profitable. Part of that profitability relates to local regulation. If a farmer plans on doing something, they have to consider how much is it going to cost to go through that regulation? It is important from a municipal level because they are charged with protecting public health and safety. They have to look at building codes, set backs, neighbor issues, etc. It is important for them to have some level of review. Not only are there zoning districts but also overlay districts that affect the farmer's ability to farm and where they are going to put structures. We try to keep things simple when we review it. Instead of protecting your view scape, is there a way to hide some of the building? Another option is to have laws to enhance farming. For example – a farmer can harvest timber as long as the sale of timber doesn't exceed the sale of crops, livestock and livestock products.

Comment from attendee: Following up on protecting and increasing ag land, it seems there could be a zoning code that facilitates residential and commercial development in areas other than prime farmland. That is an important way to reduce the regulatory burden on developers which is corollary to maintaining ag land.

Q. Since farm uses are exempt from eminent domain..... gas pipelines and compressor stations are often governed by eminent domain. If the land is farm use in an ag district are is it exempt from that eminent domain?

A. There are areas in the law that are precluded from protections. One area is gas lines, pipelines, anything that is governed by the Public Service Commission, article Seven. Anything that is governed by the Federal Energy Regulatory Commission, article 10 with wind farms (large commercial wind farms), etc. are not subject to Ag Districts Law. Erosion control, water lines, sewers, and school districts are things Ag and Markets will look at.

Q. What progress has Ag and Markets and/or the DEC made toward eliminating feral pigs in NY?

A. The animal industry has been involved in that. Eliminating them will be difficult to achieve once they are out there.

Q. Is Ag and Markets suggesting the requiring the tattooing of captive swine?

A. Dr. Somers didn't know what the animal industry is doing . He hasn't been involved with that in 4-5 years.

Q. If a town approves an application which would result in a conversion of farmland to a non-farm use in an Ag district and a neighboring farmer sees that as potentially threatening their ability to farm, would Ag and Markets get involved?

A. No, they do not get involved. The Ag Districts law protects a land owner as long as they want to remain in agricultural production. There are no restrictions on the farmer that decides he wants to sell

his property. It is up to the local town when they look at their regulations as applied to converting of property to be sure to watch for storm water, curb cuts, and erosion issues.

Q. Would an ag data statement be filed so the farmer knew?

A. It would be filed so they would know to show up at a Planning Board hearing or ZBA meeting.

Q. If a farmer wants to take their land out of an ag district, do they have the right to do that or can a town prevent them from doing it?

A. The farmer would make a request during the eight year review – it is the only time you can remove land from a district. You make that request to the County legislative body and talk to the County Farmland Protection Board which makes a recommendation to the legislature. The Town will make a recommendation to the legislature as well. The county would need a good reason for not removing your property from the district if you made your request.

Q. Returning to myths about farms, you said that construction projects on farms are exempt from local building permitting requirements. What about the NYS Building code? Are certain projects exempt from those building codes?

A. An agriculture building is exempt from all of the codes, electrical, plumbing, and fire. If there is a bathroom, you have to receive approval from the health department. A horse operation might have to comply with drinking water standards. A few buildings are not exempt, such as a greenhouse, an area that people are going to come into to buy a product. Having a stand that people will come up to but not enter is exempt. If the public enters the market, then it is not exempt. Farm worker housing has to comply with the state building code because the public is there.

Q. The way that was just described, it sounds like it should include CSAs where members of the cooperative come and pick up things from that farm building. Are those buildings covered by the state building code?

A. They may be. Dr. Somers has never heard that question regarding a CSA. The department has an individual with the Department of State that provides interpretations to Ag and Markets. If a farmer has a question, the department will contact the Dept. of State contact who will talk with his supervisor in Albany. They develop an opinion for the department as it pertains to the structure in question.

Q. To be defined as an agricultural operation, there was a minimal dollar amount that you had to earn through agriculture. Is that true?

A. At one time, up until 1997, it was like that but after that the definition was amended so all you have to be is a commercial enterprise. You need a minimum gross sales to qualify for an ag value assessment but you don't have to have an ag value assessment to be an ag operation.

**The following questions and answers are from an email conversation between H. Maniscalco and Dr. Somers.**

*What is the definition of "Farming"?* I have attached the "complete" definition of "farm operation" [AML §301(11)].

*What is the fundamental purpose of the Right to Farm law?* There is a right to farm provision in the Agriculture and Markets Law (AML) which is §308. In the late 1960's the New York State Constitution was amended to include Article XIV, §4, which states that it is the policy of the State to conserve and protect its natural resources and encourage the development and improvement of its agricultural land for the production of food and other agricultural products. The State Legislature was charged with the task of providing an adequate mechanism to protect the State's agricultural lands. In 1971, Article 25-AA was enacted to conserve, protect and encourage the development and improvement of agricultural lands for the production of food and to conserve them as valued natural and ecological resources (AML §300 – Declaration of legislative findings and intent). I have attached a two-page brochure that discusses the provisions of Article 25-AA.

*Do activities on the landowner's property which are unrelated to "Farming" get governed any differently or can they by law, local or otherwise, be governed differently? Examples of these might be things like opening a dance school, operating a cafe, gas drilling, gold mining.* All farms have to comply with local rules, regulations, laws and ordinances. If the farmer believes that a local law or its administration is unreasonably restrictive, they may request a review by the Department. The requesting landowner must be a "farm operation" and the land being regulated must be located within a county adopted, State certified agricultural district.

Non-farm related activities are not protected under the AML. We have protected a café that raised all of the product served but have not covered the sale of sandwiches/ice cream and drinks at farm markets. We have covered weddings if the wine served (and only wine served) exceeds the rental fees for the facility and the food is catered. We are very specific when it comes to intent; which must be the sale and/or marketing of product grown by the farm operation.

*Are there laws in place and does the local and/or state government have the right to regulate farming practices to help ensure that a tragedy, such as the one involving the farm runoff / alga bloom / cyanotoxin in the water in Toledo, Ohio which resulted in a ban on drinking water, does not happen in this state or location?* The State, through DEC, regulates these activities. In general, the Department uses State Laws as the model and if a local law is more restrictive than a State Law, it is generally unreasonably restrictive. The town would have to show an overriding special concern, therefore the need for a more restrictive local law.

*The following question is posed based on the context of the newly approved Amendment 1 of the Missouri Constitutional Amendment: Right to Farm. Basically, the amendment guarantees the rights of its people to "engage in farming and ranching practices." This is an excerpt from the analysis of the arguments surrounding the amendment:*

*"...But a coalition of state farming groups and major agriculture corporations have spent hundreds of thousands of dollars to take aim at the Humane Society, which led a successful fight in 2010 to regulate inhumane dog-breeding practices in Missouri.*

*Backers of the amendment are wary of laws that have passed in other states, like California, where voters in 2008 approved roomier living conditions for hens, and Oregon, where a rural county's ban on genetically modified crops was overwhelmingly passed in May."*

*Does NYS RtF laws protect farmers from oversight or regulation regarding practices that are widely considered to be cruel and inhuman, such as Puppy Mills, hen confinement and so forth?* First, dogs are not considered livestock and dog breeding and sales are not protected under the agricultural districts portion of the AML. We have issued AML §308 opinions where livestock guardian dogs are protected and not a private nuisance if the animals are trained and they do their job. This is a very concise explanation which could be expanded upon. The Department follows State Laws and if a State Law dictates roomier living conditions for hens (your example), the Department's review would parallel the State Law.

*In Pure Air and Water, Inc. of Chemung County v. Davidsen (Supreme Court, Albany Co., Index No. 2690-97, Justice Keegan, May 25, 1999),* a group of neighbors challenged a second opinion issued by the Commissioner that the farm's livestock housing and manure spreading practices were sound with respect to odor. The challenge in this proceeding alleged, among other things, that AML §308 and the opinion were unconstitutional in that the opinion resulted in a taking. The Court held that both the opinion and AML §308 were constitutional and distinguished *Bormann v. Board of Supervisors in and for Kossuth County, Iowa, 584 NW2d 309, cert denied 119 S Ct 1096*, which declared a portion of Iowa's right to farm law unconstitutional.

*Is there really nothing that we can do to regulate farmers for the purposes of protecting the environment and animal welfare as I have been previously informed?* There are State Laws that protect the environment and animal welfare. The Department conducts all reviews on a case by case basis, but measures local laws against State Laws. Some State Laws prohibit regulation by local governments, such as the State's Pesticide Law which is administered by the NYS DEC.

Local governments can regulate farm operation, but they cannot unreasonably regulate them if they are located within a county adopted, State certified agricultural district. The Department's zoning guideline suggests local review through a streamlined site plan review (see the zoning guideline – a link is provided in your next question). Local governments regulate through permits (zoning and building) for setbacks, height requirements and compliance with the Building Code of New York State (Uniform Code). Some local governments have adopted reasonable site plan review procedures for farm operations, especially on small farmed parcels adjacent to non-farm neighbors or to review ingress/egress with farm markets/nursery-greenhouse operations.

Both municipalities and farm landowners request reviews/assistance from the Department in applying local law to farm operations. The Department encourages an open dialogue. We are willing to meet with the municipality and farm landowner if requested. Many times, letters from the Department to municipalities go unanswered. The Department moves forward with its review whether or not a local government decides to participate through negotiation or acquiescence.

*In the event that the Town determines that certain farming practices or other non-farming practices taking place on farms violate the Town's Comprehensive Plan or directly violate other provisions, does the Town have the right to regulate the farm in anyway?* AML §305-a states that “[l]ocal 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.” Section 283-a of Town Law says pretty much the same: “Local governments shall exercise their powers to enact local laws, ordinances, rules or regulations that apply to farm operations in an agricultural district in a manner which does not unreasonably restrict or regulate farm operations in contravention of the purposes of article twenty-five-AA of the agriculture and markets law, unless it can be shown that the public health or safety is threatened.”

Neither one of these laws prohibit a municipality from regulating a farm operation, it just says that they cannot “unreasonably restrict or regulate” a farm operation located within an agricultural district. The Department has developed a number of guidelines to help guide local governments as they amend or develop local laws that regulate land use activities, including the construction of necessary farm structures. If you scroll down the page associated with this link, you will find the Department’s guidance documents (<http://www.agriculture.ny.gov/ap/agsservices/agdistricts.html>).

*If the summation is that farms and farming practices can in no way be regulated at the local levels, does that not lend itself to abuse and other possible criminal and/or dangerous activities?* I believe I have answered this question; local municipalities cannot “unreasonably restrict or regulate” farms.