



Agriculture and Markets

ANDREW M. CUOMO
Governor

RICHARD A. BALL
Commissioner

February 17, 2023

Hon. David Phillips, Supervisor
Town of Manchester
1272 County Road 7
Clifton Springs, NY 14432

Stewart Gwilt, Chairman
Town of Manchester Planning Board
1272 County Road 7
Clifton Springs, NY 14432

Re: AML §305-a (1) Review Concerning the Town of Manchester's Zoning Code and its Application to Will-O-Crest Farms, LLC, Ontario County Agricultural District No. 1

Dear Supervisor Phillips and Chairman Gwilt:

By letter dated June 21, 2021, the Department informed the Town of Manchester (Town) that it received an Agriculture and Markets Law (AML) §305-a request from William Young, owner of Will-O-Crest Farms, LLC, ("Farm") to review the Town of Manchester site plan requirements administered by the Town of Manchester's Planning Board.

Mr. Young's AML §305-a application indicates that the Farm requested site plan approval to construct a 240' x 400' manure storage facility on Thompson Road in 2021. The Town Planning Board at its September 21, 2021 meeting approved the site plan with operating conditions for pond depth monitoring, pond site maintenance, including wall and liner maintenance, and ground water monitoring wells.

Based on the information discussed below, the Department has determined that Will-O-Crest Farms, LLC, constitutes a farm operation for AML §305-a purposes. Further, that the Town Zoning Code, as administered by the Planning Board, unreasonably restricts Will-O-Crest Farms, LLC, construction of a manure storage, in possible violation of AML§305-a by conditioning site plan approval on additional operating requirements.

AML Definition of Farm Operation

AML §301(11) defines "farm operation," in part, as "the land and on-farm buildings, equipment...and practices which contribute to the production, preparation and marketing of crops, livestock and livestock products as a commercial enterprise." Further, a farm operation may consist of "one or more parcels of owned or rented land, which parcels may be contiguous or noncontiguous to each other." The definition of "crops, livestock and livestock products" includes "field crops, including corn, wheat, oats" and livestock including, but not limited, to cattle.

Will-O-Crest Farms, LLC, is a dairy farm with 2,050 lactating cows and 1,500 replacement animals. Mr. Young indicates that Will-O-Crest produced 55,000,000 pounds of milk last year. According to information submitted, Will-O-Crest Farms, LLC, is comprised of 1,500 acres which are owned, and an additional 2,500 acres are rented. Mr. Young indicated that 1,160 acres of the 3,500 acres, are used for alfalfa and grass for haylage, 250 acres of triticale for silage, 250 acres of wheat and 1,900 acres of corn for silage and grain. Will-O-Crest employs 40-50 people to operate the dairy. The Farm performs all required field work, except for bailing forages and utilization of a custom manure application business to assist with some manure application.

On August 1, 2022, Kathleen Tylutki, Department Senior Environmental Analyst, performed an on-site review to examine the scope of the proposed activity, and to determine whether the operation is a farm operation for purposes of AML §305-a. Ms. Tylutki, during the site visit, observed the approved location of the manure storage, as well as the main farm operation. She observed multiple barns with dairy cows, as well as calf hutches with calves inside. Mr. Young indicated, and Ms. Tylutki observed, that the farm utilizes a solids separator for manure and a sand separation system, which removes bedding sand from the manure. Mr. Young indicated that the farm has the equipment for manure injection. Ms. Tylutki observed the construction of the manure storage, which was subsequently completed by the end of Summer 2022. Ms. Tylutki observed that the vicinity around the manure storage site is rural residential. However, she noted that there are no residences immediately next to the storage site. Further, the proposed site is located in the back of the field and behind a knoll.

Based on the foregoing information, the Department has determined that Will-O-Crest Farm, LLC, is a farm operation, located within Ontario County Agricultural District No. 1, a county adopted, State certified agricultural district, and that the proposed structure and uses, as described above, are also part of the farm operation, and therefore, eligible for protection from unreasonable local restrictions pursuant to AML §305-a(1).

Application of Local Law to Farm Operations within Agricultural Districts

The purpose of an agricultural district is to encourage the development and improvement of agricultural land and the use of agricultural land for the production of food and other agricultural products as recognized by the New York State Constitution, Article XIV, Section 4. Therefore, generally, the construction of on-farm buildings and the use of land for agricultural purposes should not be subject to site plan review, special use permits, or non-conforming use requirements when conducted within an agricultural district. Generally, farmers should exhaust their local administrative remedies and seek, for example, permits and exemptions available under local law or area variances before the Department reviews the administration of a local law.

The application of site plan requirements to farm operations can have significant adverse impacts on such operations. Requirements in local laws, can be expensive due

to the need to retain professional assistance to certify plans or simply to prepare the type of detailed plans required by the law. The lengthy approval process in some local laws can be burdensome, especially considering a farm's need to undertake management and production practices in a timely and efficient manner.

However, as discussed in more detail in the Department's *Guidelines for Review of Local Zoning and Planning Laws*,¹ the Department recognizes the desire of some local governments to have an opportunity to review agricultural development and projects within their borders. Therefore, the Department has developed a model, streamlined site plan review process which attempts to respond to farmers' concerns while ensuring that local issues are examined. The Department's *Local Zoning Guidelines* discuss the Department's recommended streamlined site plan review process in greater detail.

Nutrient management practices are an essential component of any farm operation and are protected under AML §305-a from unreasonable local restrictions. The Department recognizes a local government's right to regulate certain aspects of the storage and disposal of solid wastes within its geographic boundaries. However, as discussed further in the Department's *Guidelines for Review of Local Laws Affecting Nutrient Management Practices*² AML §305-a prohibits local governments from enacting and administering laws that would unreasonably restrict farm operations within a county adopted, State certified agricultural district unless the locality can show a threat to the public health or safety.

Review of Town of Manchester Zoning Article V

Town of Manchester Zoning Article V, Supplementary Use Regulations, §325-42 describes additional requirements for Swimming pools, spas, hot tubs and open water ponds; and manure storage facilities. Subdivision (D)1 provides that manure storage facilities may be allowed in the A1 district³ but are subject to site plan review and approval by the planning board. As stated above, the Department recommends a streamlined site plan be applied by local governments that seek to subject a farm operation's agricultural structures, uses or equipment to site plan review.

Setbacks

Section 325-42(D)(2)b states that manure storage facilities should be located at least 500 feet from a property line. Large setback distances increase the cost of doing

¹ The Department's *Guidelines for Review of Local Zoning and Planning Laws* is publicly available at the following link: <http://agriculture.ny.gov/land-and-water/guideline-review-local-zoning-and-planning-laws>.

² The Department's *Guidelines of Local Laws Affecting Nutrient Management Practices (i.e. Land Application of Animal Waste, Recognizable and Nonrecognizable Food Waste, Sewage Sludge and Septage; Animal Waste Storage/Management)* is publicly available at the following link: <http://agriculture.ny.gov/land-and-water/guideline-review-local-laws-affecting-nutrient-management-practices>

³ The proposed manure storage facility is located within the Town's A1 zoning district.

business for farmers because the infrastructure needed to support the operation may be located within the farmstead area which may be within or adjacent to the setback. Further, there may be situations when the most favorable location for manure storage both environmentally and operationally, may be less than 100 feet from a property line and a 100 feet setback may be considered unreasonable under certain circumstances, discussed in more detail in the Departments *Guidelines for Review of Local Laws Affecting Nutrient Management Practices*².

Section 325-42.2(D)(2) states that landscape buffering with plantings or fencing may be required. The Department recognizes that the Planning Board did not condition Will-O-Crest's manure storage approval on screening. However, the Department is just pointing out that it generally views screening requirements imposed on farm operations as suggesting that farm operations and associated structures are, in some way, objectionable or different from other forms of land use that do not have to be screened. Farmers should not be required to bear the extra costs to provide screening, requiring a farm operation to install screening would be unreasonably restrictive and in possible violation of AML §305-a.

Section 325-42.2(D)(3) provides for the installation of up to four groundwater monitoring wells and requires annual testing of the groundwater to be performed with formal test reports submitted to the Manchester Town Board. This manure waste storage facility is already regulated by the Farm's Concentrated Animal Feeding Operation ("CAFO") permit and pursuant to State Law as administered by NYS Department of Environmental Conservation (DEC). Further, the requirement for ground water wells lacks environmental benefits, may increase the potential for groundwater contamination, and is expensive. As such, the Department views this requirement as unreasonably restrictive in possible violation of AML §305-a.

Section 325-42.2(D)(2)(5) states that any manure storage facility to be built in any district other than an A-1 will be required to comply with §325-66, Special use permits. This is not an issue in this review because the proposed manure storage is located within the A-1 district, however, farm operations located within a county adopted, state certified agricultural district should generally not be required to apply for Special Use Permits for farm uses, structures and farm equipment.

Review of Planning Board decision

On September 21, 2021, the Town Planning Board approved Will-O-Crest's manure storage site plan with the following conditions:

1. Pond Depth Monitoring:
 - a. A regular (at a minimum monthly) logging of pond depth and remaining "freeboard."

- b. Pond levels not to exceed design engineers recommended maximum depth, to ensure that there is sufficient freeboard available to handle any foreseeable excess water event.
2. Pond site and walls must be properly maintained:
 - a. No evident erosion
 - b. No animal holes
 - c. Grassy exterior slopes
3. Liner Maintenance
 - a. Should the liner leak monitoring system identify a leak, the pond will be drained, and the leak fixed within one operation cycle of the pond.

As discussed previously, the Planning Board's conditions are already required by DEC under the Farm's CAFO permit. In the Department's view, the additional monitoring and maintenance required by the Town would be excessive and beyond what is required under the CAFO Permit, and is unreasonably restrictive, in possible violation of AML §305-a (1).

The Planning Board also conditioned its approval on the following operating requirements:

1. Ground water monitoring well(s) required:
 - a. Installation of four ground water monitoring wells, equally spaced around the circumference of the pond.
 - b. Wells must be a sufficient depth to ensure that ground water is present at all times.
2. Sampling and Testing
 - a. The ground water monitoring wells shall be tested within 30 days of installation to establish a baseline for future test results.
 - b. All monitoring wells to be sampled and tested annually
 - c. Proper procedure to be used for sampling
 - d. The annual samples are to be tested at a certified lab for:
 - i. Pathogens associated with animal manure
 - ii. Phosphorus
 - iii. Nitrogen
 - iv. BOD
 - v. All test results to be kept on file and accessible to the zoning office.
3. Inspections and Annual Review
 - a. Site inspections: The Town's Zoning Office may visit and inspect the condition of the manure pond on a regular basis to confirm the site is property maintained. Failure to maintain the pond site will require corrective action on the part of the landowner.
 - b. Pond depth/freeboard levels: Pond depth/freeboard records to be provided to the Town Zoning Officer annually and at any time upon request of the

Town Zoning Officer. Failure to maintain the pond at proper levels will require corrective actions on the part of the landowner.

- c. Groundwater test results: ground water test results shall be provided to the Town Zoning Officer annually and at any time upon request of the Town Zoning Officer. Deterioration of the ground water test results from the base line test results will require corrective actions on the part of the landowner.

CAFOs are already regulated through a DEC state-wide permit and are required to implement federal NRCS Conservation Practice Standard Waste Storage Facility Code 313⁴ among other Federal and state standards. The Department considers local laws or requirements which exceed state and Federal standards as unreasonably restrictive unless the Town can demonstrate an overriding local concern, or specific local conditions that necessitate higher standards.

The Department views the site plan conditions imposed by the Planning Board as redundant, excessive and expensive. As previously stated, the waste storage facility is already regulated by the Farm's CAFO permit and pursuant to State Law. The installation of ground water wells not only lacks environmental benefits but may increase the potential for groundwater contamination. Further, existing municipal staff are unlikely to have the necessary training to evaluate Will-O-Crest's compliance and the records that the Town requires are already reviewed by DEC staff and not subject to public access. The Zoning Code provisions (as discussed above), and additional Planning Board conditions, will result in unnecessary costs to the farmer that are excessively burdensome in addition to the cost of complying with the CAFO permit and NYS laws.

Therefore, based on the foregoing, the Town's Zoning Code as administered by the Planning Board and the site plan conditions which require monitoring, maintenance, installation of ground wells, sampling, inspections and groundwater testing beyond its CAFO permit requirements and State law, unreasonably restricts the Will-O-Crest Farms, LLC, in possible violation of AML §305-a(1).

CONCLUSION

For the reasons set forth above, the Town Zoning Code and its administration by the Planning Board which approved Will-O-Crest's manure storage site plan with conditions, unreasonably restricts the farm operation, in possible violation of AML §305-a (1).

If the Town Board or Planning Board believes that the public health or safety is threatened by the farm's proposed manure storage, please provide us with any

⁴ Natural Resources Conservation Service Conservation Practice Standard Waste Storage Facility Code 313, available at https://www.nrcs.usda.gov/sites/default/files/2022-10/Waste_Storage-Facility-313-CPS-May-2016.pdf.

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documentation and other evidence you may have to that effect. We request that the Town Board and/or Planning Board respond in writing within 30 days of receipt of this letter. The Department will consider the Town Board and Planning Board's response in evaluating whether the local law and its administration are in compliance with §305-a (1).

The Department would like to work with the Town and the Planning Board to resolve the concerns identified. If you have any questions concerning the agricultural issues identified, or would like to discuss the review process, please contact me at (518) 457-2851. If the Town's attorney has questions, he may contact Danielle Cordier, Associate Attorney, at (518) 457-2449.

Sincerely,

Michael J. Latham

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Latham
Date: 2023.02.17 14:48:07 -05'00'

Michael J. Latham
Director

Enc.

cc: William Young, Will-O-Crest Farm, LLC
Kate Tylutki, Dept. of A&M
Danielle Cordier Esq., Associate Attorney, Dept. of A&M