SOUND AGRICULTURAL PRACTICE
Opinion Number 96-2

SUBJECT: Request for an opinion pursuant to Section 308 of the Agriculture and Markets Law as to the soundness of a certain agricultural practice conducted by Mark J. Rogers in the Town of Cambridge, Washington County.

REQUESTOR: Mr. Mark J. Rogers
RD 2, Box 397
Anthony Road Extension
Cambridge, New York 12816
(518) 692-9966

Preliminary Statement

On August 15, 1995 the Commissioner received a formal request from Mr. Mark J. Rogers to review the manner in which he intends to remove a hedge row on his farm. Mr. Rogers plans to remove the hedge row on the west side of the farm to construct a fence and establish permanent grass for the raising of livestock. Prior to requesting assistance from the Department, Mr. Rogers was contacted by a neighbor and an attorney for the neighbor and asked to temporarily stop the hedge row removal process due to a number of factors, including a property boundary dispute. The dispute over the property boundary, however, is beyond the scope of this review.

Pursuant to a verbal request for an Opinion by Mr. Rogers on August 2, 1995, the Department conducted a sound agricultural practice review of the Rogers' hedge row removal process. On August 3, 1995 Mr. Robert Somers, Principal Environmental Analyst with the Department of Agriculture and Markets, visited the farm to gather information and take pictures of the hedge row removal process. At the time of the field review the hedge row vegetation and associated rock wall was in the process of being removed.

Information Considered in Support of the Opinion

1. The Rogers farm consists of approximately 85 acres which includes a residence, several barns and outbuildings, fields for the production of hay, and pasture for the raising of beef cattle. Mr. Rogers stated that he raises between 30 and 40 head of cattle at any one time. The farm is located off of Anthony Road Extension, which is north of West Cambridge and southeast of Fly Summit, Washington County. The farm is located within Washington County Consolidated Agricultural District #3.

2. As observed by Mr. Somers at the time of his field visit, the hedge row being removed by Mr. Rogers is located on the west side of the property, between land owned by Mr. Rogers and his neighbors (i.e., the complainants). The complainants own the parcel of land adjacent to the hedge row being removed.

3. Mr. Rogers stated that on July 22, 1995 the complainants visited him to inquire about the removal of the hedge row. On July 29, 1995 Mr. Rogers received a visit from Mr. Rob McIntosh, a Town Councilman, who requested on behalf of the complainants that the larger trees near their house be kept and not removed as part of the project. On August 1, 1995 Mr. Rogers received a letter from the complainant's attorney, Mr. Rolf Sternberg, requesting him to cease and desist in the removal of the stone wall portion of the hedge row pending the results of a boundary survey.

4. On August 3, 1995 Mr. Somers visited the Rogers farm to ask questions and take pictures of the hedge row project which was underway. Approximately one-third of the hedge row and rock wall had been removed by Mr. Rogers and two-thirds remained. All of the smaller trees along the remaining two-thirds of the hedge row had been knocked down by a bulldozer and were in the process of being removed. Mr. Rogers stated that he was not going to proceed any further until the survey, paid for by the complainants, was conducted. He stated that the work stoppage, however, was contingent upon the survey being completed within a reasonable period of time.

5. During the Department's field visit, Mr. Rogers stated that the complainants do not want the hedge row removed because they like the privacy it provides. The hedge row acts as an effective screen from Mr. Rogers' farming operation. Furthermore, it appears that the large trees on the Rogers property provide shade to the complainants during the summer.

6. Mr. Rogers stated that he is removing the hedge row because of one serious accident and one near miss that resulted from sticks and branches protruding from the hedge row. According to Mr. Rogers, these sticks and branches are dangerous to him and his machinery when he mows. Mr. Rogers informed Mr. Somers that as part of a comprehensive program to rehabilitate the farm, he wanted to remove the unsightly hedgerow to construct a permanent electric fence which will be used to keep his livestock on the property.

7. Mr. Rogers stated that the property boundary had been surveyed by the complainants earlier that year and during the Department's field visit, survey stakes could be observed in the complainant's hedge row, which is located west of the project area. On September 19, 1995 Mr. Rogers acknowledged receipt of Mr. Sternberg's letter, dated August 1, 1995, and stated that sufficient time has passed for the completion of the survey. Mr. Rogers further stated in his letter to Mr. Sternberg that it is important that the hedge row removal project be completed before winter and that this delay had cost him both time and money.

8. On September 21, 1995 Mr. Sternberg sent Mr. Rogers a letter stating that the survey of the property boundary was complete and that he would contact him when a copy of the map is received. On October 2, 1995 the Department received

a fax from Mr. Rogers indicating that the complainant called him on September 20, 1995 and acknowledged that the hedge row in question was on the Rogers property. As of November 8, 1995 Mr. Rogers informed Mr. Somers that he had not received any correspondence from Mr. Sternberg verifying the survey results.

9. Mr. Rogers stated that he has not been cited for any violations of law and that no legal action is pending. Mr. Rogers stated that he would like a sound agricultural practice opinion to provide protection against a possible nuisance suit. On October 27, 1995 Mr. Rogers informed Mr. Somers that he would not proceed with the project until he received an opinion from the Department.

10. On January 2, 1996 Ms. Ruth Moore, Associate Attorney with the Department, contacted the complainant concerning the Department's review of the agricultural practice. The complainant indicated that she and her husband were initially concerned that the hedge row in question was on their property. They hired a surveyor who determined that the hedge row was located on the Rogers property. The complainant stated that all but a portion of the hedge row directly in front of their house had been removed. She further stated that one of their concerns is the loss of privacy.

11. On February 8, 1996 the Department received a letter from Mr. Mark McQuerrey, an attorney representing the complainants, expressing concerns about the removal of the hedge row/stone wall on the Rogers property. Mr. McQuerrey stated that the property boundary issue is still not settled. He stated that due to the proximity of the sugar maple/lilac hedge to his client's home, the hedge row significantly enhances the aesthetic and historical quality of his clients' residence. In Mr. McQuerrey's opinion the removal of the hedge row and stone wall will only result in the gain of a narrow strip of land for pasture and that the hedge row does not interfere with Mr. Rogers' farming activities. Mr. McQuerrey stated that his clients have continually tried to work with Mr. Rogers to amicably resolve the issue and ultimately, develop a boundary line agreement that is acceptable to both parties. According to Mr. McQuerrey, his clients have offered to maintain the hedge row area for Mr. Rogers. In conclusion, Mr. McQuerrey requested the Department to postpone the issuance of the Opinion to allow time for mediation, that the Department deny Mr. Rogers' request for an Opinion because it is an inappropriate use of the Right to Farm Law, and that additional information be obtained on the need to remove the hedge row and the future prospect of the Rogers farming operation. The Department responded on February 23, 1996 informing Mr. McQuerrey that as a practical matter, the Opinion would not be issued until the review is complete, which may be in two to four weeks.

Findings

Based upon the facts, information, and circumstances described above, and in consultation with the State Advisory Council on Agriculture; the New York State College of Agriculture and Life Sciences at Cornell; the USDA Natural Resources

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Conservation Service; and the Sound Agricultural Practice Guidelines[1] by which agricultural practices are evaluated, I find the following:

1. To the best of the Department's knowledge, Mr. Rogers has not been cited for any violation of federal, state or local laws or regulations in relation to the hedge row removal practice.

2. The removal of old rock fencing and associated vegetation within a hedge row to establish permanent fencing is a common agricultural practice. The establishment of a permanent fence is required to control the movement of livestock.

3. The removal of vegetation and rock walls that have been partially obscured by vegetation is necessary to reduce possible injury to the farmer and farm machinery. The removal of the hedge row is also deemed necessary if Mr. Rogers intends to construct and maintain a permanent fence on or near the property boundary.

4. It does not appear that the removal of the hedge row has or will cause any bodily harm or property damage off the farm.

Based on all the foregoing information, I conclude that the subject agricultural practice of hedge row removal is sound.

3-21-96
Date

by
Donald R. Davidsen, D.V.M.
Commissioner

[1]On November 1, 1993 the NYS Advisory Council on Agriculture published its report entitled *Protecting the Right of New York Farmers to Engage in Sound Agricultural Practices*. The Council developed guidelines to assist the Commissioner of the Department of Agriculture and Markets in determining what is sound pursuant to Section 308 of the Agriculture and Markets Law. The Guidelines state that the practice 1) should be legal; 2) should not cause bodily harm or property damage off the farm; 3) should achieve the results intended in a reasonable and supportable way; and 4) should be necessary. The sound agricultural practices guidelines recommended by the Advisory Council on Agriculture are given significant weight in assessing agricultural practices.