

**SOUND AGRICULTURAL PRACTICE**  
**Opinion Number 96-3**

**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 Millbrook Equestrian Farms, Inc. at Chestnut Ridge Road, Town of Dover, in Dutchess County.

**REQUESTER:** Millbrook Equestrian Farms, Inc.  
Rural Route 1, Box 73A  
Dover Plains, NY 12522

**Preliminary Statement**

On February 28, 1996 Commissioner Davidsen received a formal request from Mr. Brett Hildebrand, President of Millbrook Equestrian Farms, Inc., to conduct a review on the practice of constructing a mobile home for a farm worker and his family and having a farm worker and his family occupy the mobile home once the construction was complete. Millbrook Equestrian Farms applied for and obtained a building permit from the Town of Dover on September 28, 1995 and a certificate of occupancy from the Town on December 15, 1995. Approval from the Dutchess County Health Department for the septic system was obtained on December 5, 1995. Richard and Deborah Geltman, neighbors of Millbrook Equestrian Farms, filed a Motion for Preliminary Injunction with Temporary Restraining Order, by Order to Show Cause, with Dutchess County Supreme Court. The lawsuit by the Geltmans seeks to enforce the Town of Dover Plains' zoning law, which prohibits mobile homes outside mobile home parks, against Millbrook Equestrian Farms and alleges that the mobile home is a private nuisance.

Pursuant to this request, the Department conducted a sound agricultural practice review of Millbrook Equestrian Farms' practice of constructing a mobile home for a farm worker and his family and having the farm worker and family occupy the mobile home. On April 19, 1996, Department employees Robert Somers, Chief of the Agricultural Protection Unit, Lew Benton, Administrator of the Agricultural Districts Program, and John Rusnica, Senior Attorney, visited the farm to gather information on the erection and siting of the mobile home and to observe the mobile home. Brett Hildebrand and his wife, Jane Hildebrand, showed the Department's staff where the mobile home was sited and answered a number of questions related to the farm operation and the erection and siting of the mobile home.

## Information Considered in Support of the Opinion

1. Millbrook Equestrian Farms, Inc. consists of approximately 50 acres of land, a 28-stall horse barn, a covered riding facility, a principal and secondary residence, a mobile home, and a number of additional agricultural structures\outbuildings. Mr. Hildebrand stated that the property was purchased in April, 1995 and that he plans to continue with the past farm practices, which were to board horses and raise livestock for sale. In a copy of an affidavit, which was signed by Mr. Hildebrand on March 1, 1996, he states that the farm will raise, train, and sell horses for profit, that two horses will be purchased in the Spring of 1996 for such purposes, and that they intend to begin raising cattle in 1996. Furthermore, Mr. Hildebrand stated that negotiations are proceeding to rent 100 acres of adjoining property for growing of hay for horses and for sale.

2. The farm is located in the Town of Dover, Dutchess County Agricultural District #23. The property was placed into Agricultural District #23 in 1984 when Agricultural Districts 9, 11, 12, 13, and 17 were reviewed and consolidated into District #23. The farm remained in Agricultural District #23 upon completion of its latest review, which was certified for districting by Commissioner Davidsen on April 8, 1996.

3. On February 21, 1995 the Dutchess County Legislature approved Resolution #89 which amends the definition of *land used in agricultural production* to include lands of not less than ten acres used in the preceding two years to support a commercial horse boarding operation with annual gross receipts of ten thousand dollars or more. Mr. Hildebrand stated that he has leased the horse facilities to an individual that has agreed to board at all times at least 10 horses and to gross at least \$10,000 per year from boarding activities. Mr. Hildebrand is requiring the lessee to keep sufficient records to satisfy any inquiries from the Town Assessor concerning the farm's annual gross receipts.

In a December 13, 1995 letter to Mr. Hildebrand from Frances Hannan, Sole Assessor for the Town of Dover, Mr. Hildebrand was informed that he is entitled to continue to receive the agricultural assessment placed on the property because the prior owner qualified and received an assessment in 1990, 1991, 1993, and 1995. According to the letter, Millbrook Equestrian Farms, Inc. is entitled to the agricultural assessment for 1996.

4. A number of reviews by the Town and the County Health Department occurred prior to the occupancy of the mobile home. On September 18, 1995, James T. Napoli, P.E. with the Dutchess County Department of Health, approved the site for the mobile home as meeting the appropriate and applied technical standards, guidelines, policies and procedures for an in-ground sewage disposal and treatment system. According to the letter, approval is conditioned on inspection by a representative of the Dutchess County Department of Health to determine if the

construction was completed in general conformance with the approved plan. According to the Dutchess County Department of Health Inspection Report, Tom Royster of the Millbrook District Office inspected the septic system on November 29, 1995. The inspection report indicates that Mr. Royster required the installation of a fence around the septic system to separate the horses from the leach field. Upon construction of said fence, approval was granted by the Department of Health on December 5, 1995.

5. On September 28, 1995 Millbrook Equestrian Farms applied for a building permit for the construction of the mobile home, which was issued by the Town of Dover on the same date. Although the Town passed a zoning law in 1978 that prohibits the siting of mobile homes outside of mobile home parks, Mr. Binotto, Building Inspector for the Town of Dover, stated that the actions of the Town are consistent with prior decisions concerning the use of mobile homes for farm worker housing and Sections 301, 305(2) and 305-a(1) of the Agriculture and Markets Law. According to Mr. Terry Binotto, the Town has consistently issued such permits to farmers prior to and after the passage of the Town's Zoning Ordinance. On December 15, 1995 the Building Inspector issued a Certificate of Occupancy for the mobile home to Millbrook Equestrian Farms, Inc.

6. On November 15, 1995 Mr. Binotto responded to Mr. Paul Quartararo, by letter, in response to a complaint filed by Mr. Quartararo concerning the commercial use of said farm and the siting of a mobile home on the property. Mr. Binotto referred to the past actions of the Town, beginning in 1973, which issued permits to other farmers for the construction of mobile homes to house farm workers. Mr. Binotto stated that said action is in keeping with the intent of Article 25-AA of the Agriculture and Markets Law. He further stated that the mobile home was sited to make it as inconspicuous as possible and that the septic and water supply was approved by the Board of Health. Mr. Binotto stated that it is his belief that the siting of the mobile home had not broken any of the local laws and/or superseding State statutes. Mr. Binotto concluded that if Mr. Quartararo was not in agreement with his decision, the action could be brought before the Town's Zoning Board of Appeals.

7. On November 15, 1995 neighboring landowners Richard and Deborah Geltman appealed the action of the Building Inspector (i.e., the issuance of a building permit) to the Zoning Board of Appeals. On February 26, 1996 the Zoning Board of Appeals for the Town of Dover concluded, in a 3 to 1 vote, that the Code Enforcement Officer acted properly in granting a building permit for the mobile home.

8. A motion for Preliminary Injunction is pending before the Honorable Joseph Giudice. On March 1, 1996 Millbrook Equestrian Farms filed its answer and opposition papers with the court in response to the lawsuit by the plaintiffs. One of the points in the lawsuit is that the construction of the mobile home within 300

feet of the plaintiffs' house, which is rented to Al and Kim Bloom, constitutes a private nuisance. The plaintiffs are seeking to have a permanent injunction placed on the defendant to cease the use of the mobile home in violation of the Town of Dover Zoning Law, have the mobile home removed, and return the property to its original condition.

9. On April 19, 1996 Department staff visited the Hildebrand farm, which is located in the northeastern corner of Halls Corner Road and Chestnut Ridge Road, to observe the practice in question. Those attending the field review included Brett Hildebrand, Jane Hildebrand, and Department employees Robert Somers, John Rusnica, and Lew Benton. At the time of the review, the mobile home was being used to house the farm's employee.

10. The mobile home is a single-wide structure on a permanent foundation. The home was constructed north of an enclosed horse riding facility and a 28-stall horse barn (see attached schematic). According to Mr. Hildebrand, the mobile home was constructed at this location because of its proximity to the two principal farm structures, the suitability of the site for a sanitary septage system, and the ability to partially obscure the mobile home from view. The hillside on which the home was placed was excavated to create a level pad on which to construct the mobile home. By placing the home into the hillside, the view from Chestnut Ridge Road and the adjoining property owner is partially obscured. In addition, the excavated soil was piled on the downslope side of the building site, between the road and the mobile home, to partially obscure the view of the premises.

11. Mr. Hildebrand stated that prior to choosing the present site for the mobile home, other sites were considered, but rejected. The other sites included an open field located south of the horse barn and on top of the hill overlooking the two facilities east of the buildings. Mr. Hildebrand stated that he needed to locate the mobile home near the two structures because the predominant amount of work for the employee occurs within or adjacent to the two structures, and for safety reasons. Mr. Hildebrand stated that the employee needed to be located within eyesight of the structures to protect against vandalism, fire, unexpected problems with the animals, and for security.

12. Mr. Somers asked Mr. Hildebrand if the mobile home could have been sited on the existing farm road between the two farm buildings and the embankment. Mr. Hildebrand stated that the mobile home could not be located within this area because the area must be kept open for fire fighting equipment, if needed, and for other safety reasons. It was observed that the terrain was steeply sloping and that it would be impracticable to site a trailer on such a steep slope or to excavate an area suitable for the siting of a trailer. The distance between the barns and the top of the hill, which is fenced, appears to be too short to allow the siting of a mobile home and an accompanying septic system.

13. A possible alternative to constructing a mobile home would be to build a permanent house for the farmworker. Such construction would be significantly more expensive, however. According to the building permit application, the mobile home here is 14 feet by 70 feet, with a cost of \$5,000.00 and an estimated value of construction of \$15,000.00. Based upon an estimate of \$75.00 per square foot to construct a "stick-built" house, the cost to construct such a house of the same square footage as the mobile home would be \$73,500.00. Also, from Department staff's observation, the site near the barns may not accommodate a permanent house.

14. Department staff examined the existing farm buildings, looked at the horses in the barn and the open fields, and talked briefly with the farm employee and John Bednar, Secretary of Millbrook Equestrian Farms, Inc. and father-in-law to Mr. Hildebrand.

15. On April 9, 1996 Mr. Rusnica advised Paul Quartararo, attorney for the plaintiffs, over the phone that the Department would be at the Hildebrand's farm on the 19<sup>th</sup> of April. He explained that Department staff would be willing to meet with him and/or the Geltmans on that day. A meeting was not convened since Mr. Quartararo did not contact the Department; therefore, on April 22, 1996, Mr. Rusnica wrote Mr. Quartararo a letter asking that comments, if any, be submitted to the Department by May 13, 1996. Mr. Quartararo contacted Mr. Rusnica, by letter, on May 16, 1996 asking for an extension. Mr. Rusnica agreed and stipulated that comments must be received by the Department on or before May 27, 1996. As of July 23, 1996, written comments have not been received from Mr. Quartararo or the Geltmans.

16. At the time of the field visit, Mr. Hildebrand provided Mr. Rusnica with a list of neighbors and their phone numbers as requested. On May 16, 1996 an attempt was made to contact, by phone, the six neighbors on the list. On May 17, 1996 a letter was sent to each of the neighbors requesting comments regarding the practice under review. They were asked to contact the office in writing or by phone by June 3, 1996.

17. On May 21, 1996 Gerald Noland, a neighbor, called with comments on the Department's review. Mr. Noland stated that he passes by the farm and mobile home at least twice a day. He stated that since our field review, which I informed him was on April 19<sup>th</sup>, Mr. Hildebrand had moved additional soil onto the spoil mound and as such, the mobile home is further obscured from sight. Mr. Noland stated that only the roof of the mobile home can be seen from the road. He stated that Mr. Hildebrand has done a wonderful job in restoring an old house on the property. In conclusion, Mr. Noland stated that he has no objections to the mobile home.

18. On May 23, 1996 Mr. Hildebrand confirmed that the soil material mentioned by Mr. Noland had been moved around the prior week and planted to grass to stabilize the soil.

19. On June 5, 1996 Mr. Rusnica talked to Mr. Lex Anderson by phone. Mr. Anderson lives in the vicinity of Millbrook Equestrian Farms, Inc. He stated that he is opposed to the siting of a mobile home on the farm property for the following reasons:

- (1) Almost 20 years ago, an effort was made to develop a mobile home park on Chestnut Ridge Road. There was a lot of public opposition in the community to the proposed mobile home park.
- (2) An existing mobile home park is located within one (1) mile of Millbrook Equestrian Farms, Inc.
- (3) There are a lot of young horse people in the community who could work at this farm, and they live nearby.
- (4) The cottage being renovated has been used to house farm workers in the past.
- (5) Alternative housing could be provided as part of the barn renovation.

20. On June 6, 1996 Mr. John Rusnica spoke to Mr. Tim Foxe, a neighbor of the Hildebrands, by phone. Mr. Foxe stated that he did not like having a mobile home in the neighborhood because it is detrimental to property values. He stated that the surrounding property owners have invested a lot of money in their homes. At the conclusion of the conversation, Mr. Foxe faxed the Department a copy of a letter, dated February 26, 1996. Mr. Foxe had submitted the letter to the Town's Zoning Board of Appeals. The letter reiterates the above observations by Mr. Foxe as well as questioning the mobile home's conformity with local zoning laws. Mr. Foxe asks the ZBA to rescind the building permit if it is found to be in violation of local zoning laws.

### Findings

Based on the facts, information and circumstances described above, and in consultation with the Advisory Council on Agriculture; and the Sound Agricultural Practice Guidelines<sup>1</sup> by which agricultural practices are evaluated, I find the following:

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<sup>1</sup> 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.

1. The current placement of the mobile home allows the farm worker to have 24-hour access to the farm operation and his presence provides additional security to farm structures and animals housed on the farm. The Department has found in other cases that the use of mobile homes, to provide suitable housing for farm workers and their families, is an agricultural practice covered under Sections 305(2) and 305-a(1) of the Agriculture and Markets Law. Those sections generally prohibit municipalities from enacting or administering local laws in a manner which unreasonably restrict farm practices or structures. Frequently, farmers rely on mobile home housing for their farm laborers to accommodate the long work day, seasonal housing needs and to address the real shortage of rental housing in rural areas. Local government prohibitions or restrictions on the use of mobile homes can significantly impair the viability of farm operations. In this particular instance, the mobile home is used to house a full-time farm employee. Alternative existing housing on the farm is not available.

2. In siting the mobile home, Millbrook Equestrian Farms, Inc. placed the home in such a way that it is partially obscured from view by the adjoining landowners and travelers along Chestnut Ridge Road. There were several potential building sites where the mobile home would have been more visible. The landowner has partially screened the mobile home from view by placing it within an excavated building site and by placing the spoil material on the downslope side of the site between the mobile home and the road.

3. None of the persons interviewed by the Department cited any examples of bodily harm or direct property damage off the farm caused by the practice. The Geltmans allege in their lawsuit against Millbrook Equestrian Farms, Inc., however, that their property value is damaged by having a mobile home across from their property. One other neighbor expressed concern that the presence of the mobile home is detrimental to property values in the area. Another neighbor expressed opposition to siting the mobile home on the property, citing the existence of a mobile home park nearby, other horse people who could work at the farm and live nearby, and his belief that alternative housing could be provided as part of the barn renovation on the farm. Due to the screening, however, there appears to be minimal off-farm effect from the practice, and the minimal effect is exclusively aesthetic.

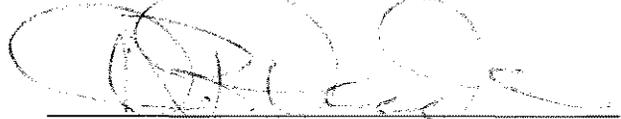
4. At the time of the field review, the mobile home was constructed by Millbrook Equestrian Farms and occupied by the farm worker. It appears that Millbrook Equestrian Farms, Inc. complied with Town law by obtaining a building permit, receiving approval from the County Health Department, and receiving an occupancy certificate prior to constructing and inhabiting the mobile home. In addition, when challenged by the complainants, the Zoning Board of Appeals upheld the Building Inspector's issuance of the building permit. The decision of the Zoning Board of Appeals has been appealed by the Geltmans.

## Conclusion

Based on all of the foregoing, I conclude that the practice of constructing a mobile home for a farm worker and his family and having a farm worker and his family occupy the mobile home in this case, as described above, is sound.



\_\_\_\_\_  
Date



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Donald R. Davidsen  
Commissioner