**STATE OF NEW YORK**
**DEPARTMENT OF AGRICLTURE AND MARKETS**

**In the Matter of Compelling Compliance with the provisions of §305-a, subdivision 1 of the Agriculture and Markets Law by:**

**The Village of Elbridge and The Planning Board of the Village of Elbridge**
**210 West Main Street**
**P.O. Box 267**
**Elbridge, New York 13080**

**DETERMINATION AND ORDER**

## PRELIMINARY STATEMENT

Upon receiving a complaint concerning the administration of the Village of Elbridge's Zoning Code, Chapter 137, which prohibits agricultural uses on certain land located within Onondaga County Agricultural District No. 3, the Department of Agriculture and Markets investigated to determine whether the Village had administered its Zoning Code in a manner consistent with the provisions of §305-a, subd. 1 of the Agriculture and Markets Law (AML).

§305-a, subd. 1 prohibits local governments from enacting or administering local land use laws in a manner that would unreasonably restrict or regulate farm operations located within an agricultural district unless it can be shown that the public health or safety is threatened.

The Department interviewed the farm owner, conducted site visits and received information from the attorney for the Village and Planning Board of the Village of Elbridge. Based upon the relevant facts and information gathered, I hereby make the following findings and conclusions which support a Determination that the Village of Elbridge and the Planning Board of the Village of Elbridge have violated AML §305-a, subd. 1 and an Order compelling compliance with such law.

## FINDINGS

1. On March 5, 1999 the Department received a request from Ruth DeMarco concerning the Village of Elbridge's action with regard to the DeMarcos' construction of greenhouses on an 11-acre parcel located at 211 West Main Street across from the Village Hall and the construction of a wooden privacy fence on another parcel within the Village located at 101 West Main Street. Ms. DeMarco indicated that the Village would not allow them to construct additional greenhouses on the 11-acre parcel, wanted them to remove the existing

greenhouses on that parcel and required that a wooden privacy fence be put up on the other parcel. The two parcels in question, tax parcel identification numbers 020-01-09.1 (11.18 acres) and 021-02-02.0 (0.75 acres) are located within Onondaga County Agricultural District No. 3.

2. On March 18, 1999, Dr. Robert Somers, Chief of the Department's Agricultural Protection Unit, met with Anthony DeMarco, the son of Ruth and Tony DeMarco, to examine the subject parcels and the DeMarco facility. Dr. Somers found the farm to be a "farm operation" as defined in §301, subd. 11 of the Agriculture and Markets Law (AML). The DeMarco farm operation raises bedding and potted plants in greenhouses for wholesale distribution, which constitutes the production of horticultural specialties as defined in AML §301, subd. 2, subsection d. Dr. Somers also determined that the two existing greenhouses at 211 West Main Street are temporary greenhouses.

3. On March 22, 1999, Kim Blot, the Director of the Division of Agricultural Protection and Development Services, sent a letter to Mayor Timothy Ganey informing him that the Department had received a request from Ruth DeMarco to conduct a review of the Village of Elbridge's Zoning Code, Chapter 137, for compliance with AML §305-a.

4. On April 23, 1999 Ruth DeMarco submitted additional information on the subject farm operation. She indicated that the DeMarcos presently farm 200 acres in Phoenix, 35 acres in Cicero, and 20 acres in North Syracuse, New York for the production of vegetables; that the two parcels located in the Village of Elbridge contain greenhouses which are used for the production of herbs, bedding and potted plants; and that they have been in this type of agricultural business for over 22 years and need to expand the number of greenhouses to support the operation. She also indicated that the Village will not give them a permit to construct 10 additional greenhouses on the 11-acre parcel.

5. By letter dated June 24, 1999 Mr. Blot informed Mayor Ganey of Ms. DeMarco's complaint that the Village had denied her a building permit to erect temporary greenhouses on the 11-acre parcel and required the construction of a wooden fence to screen existing greenhouses on the 0.75-acre parcel. Mr. Blot explained that building permits may not be required for temporary greenhouses in localities that have adopted the State Building Code[1], that wooden fencing to screen existing greenhouses may be problematic, and that agricultural uses are not permitted in the Village's regulations for the R-1 zoning district which encompasses the 11-acre parcel. Mr. Blot stated that these provisions appear to unreasonably restrict farm operations within the agricultural district in possible violation of the AML and that the Department would like to hear from the Village on the issues raised including whether it believes that the public health or safety is threatened by the operation of the temporary greenhouses.

[1] According to the Village of Elbridge Clerk, the Village has adopted the State Building Code.

6. On July 26, 1999 Harry Armani, Attorney for the Village of Elbridge and the Planning Board of the Village of Elbridge, responded to Mr. Blot's June 24, 1999 letter. Mr. Armani stated that the DeMarcos were originally denied a building permit and cited because they began building two greenhouses on the 11-acre parcel. He indicated that the DeMarcos agreed to submit a site plan application pursuant to the Zoning Code. The Village denied the application, the decision was appealed by the DeMarcos and the case was eventually heard by the Appellate Division, Fourth Judicial Department of State Supreme Court, which ordered the Planning Board to hold a new public hearing. Mr. Armani further stated that in early April 1999, the DeMarcos advised the Village that they were in an agricultural district. Mr. Armani stated that the Village objected and indicated that the Village was not properly notified concerning the modification to the agricultural district and, by motion, the Onondaga County Legislature rescinded that designation by removing the DeMarco property from the agricultural district. Mr. Armani also indicated that the Village Planning Board determined that a SEQR review of the proposed action is necessary and once completed, a public hearing will be held. Mr. Armani did not state that the public health or safety was threatened by an expansion of greenhouses on the 11-acre parcel or identify any health or safety reasons for the restrictions.

7. On August 16, 1999 Mr. Blot wrote Mayor Ganey a letter stating that the Department had completed its review of the Village of Elbridge's administration of its Zoning Code, Chapter 137, for compliance with AML §305-a, subd. 1. Mr. Blot stated that the Department had concluded that the Village's Zoning Code, insofar as it prohibits agricultural uses within a county adopted, State certified, agricultural district, violates AML §305-a, subd. 1. The Village's administration of its Zoning Code, under which approval of the DeMarcos' application to erect temporary greenhouses was denied and a building permit required for such greenhouses, was also found unreasonably restrictive in contravention of §305-a, subd. 1. Mr. Blot explained that the response from Mr. Armani references the Appellate Division, Fourth Department's decision on the Village's site plan review, but does not address the conflict of the Village Zoning Code with AML §305-a, subd. 1. Mr. Blot also indicated that Mr. Armani's response did not identify any health or safety reasons for the restrictive provisions.

   Mr. Blot also wrote that the Planning Board has required the DeMarco farm operation to comply with SEQRA and file the "long form" with the Board. Mr. Blot noted that pursuant to 6 NYCRR Section 617.5, the NYS Department of Environmental Conservation describes and lists Type II actions under SEQRA. Section 617.5(c)(3) states that "agricultural farm management practices, including construction, maintenance and repair of farm buildings and structures, and land use changes consistent with generally accepted principles of farming" are Type II actions. Pursuant to Section 617.5(a) such actions are not subject to SEQR review. Therefore, the Planning Board's requirement that the DeMarco farm operation undergo SEQR review was also found to be unreasonably restrictive.

Lastly, Mr. Blot stated that the Village's requirement for wooden fencing to screen the DeMarcos' existing greenhouses is unreasonably restrictive due to the cost to the farmer and because the Village has not shown any health or safety threat justifying its need.

8. By Mr. Blot's August 16, 1999 letter to Mayor Ganey, the Department requested that the Village modify Chapter 137 to allow agricultural operations and the production of crops, livestock, and livestock products within a county adopted, State certified, agricultural district. The Department also requested the Village to grant the DeMarcos the necessary approvals to erect temporary greenhouses as part of their farm operation in the agricultural district, provided the farmer meets reasonable standards. The Department requested that corrective action be taken within the next 30 days and that it be informed as to how the Village intends to proceed and the approximate time frame for doing so.

9. On September 28, 1999 Mr. Armani wrote Mr. Blot a letter stating that the Village does not agree entirely with the Department of Agriculture and Markets. Mr. Armani indicated that he would review additional materials sent to him by John Rusnica (Department Associate Attorney) and that he would seek an opinion from the New York Conference of Mayors' Legal Department. Mr. Armani stated that he would recommend to the Village of Elbridge Planning Board that they proceed with a Public Hearing once the SEQR long form has been completed, that the Village would hire an engineer to assist in the preparation of the SEQR long form, and then hold a Public Hearing.

10. On September 28, 1999, Mr. Rusnica provided Mr. Armani with copies of a Department guidance document on AML §305-a and court decisions in a case involving §305-a.

11. On November 16, 1999 Mr. Rusnica wrote to Mr. Armani a letter summarizing the Department's position on the issues raised in Mr. Blot's August 16, 1999 letter to Mayor Ganey. Mr. Rusnica stated that the Village had not identified any health or safety concerns associated with the operation of the greenhouses. He requested that any such concerns and evidence of any threat to the public health or safety be provided to the Department within 15 days of receipt of his letter. No response from the Village or from Mr. Armani has been received to date.

## CONCLUSIONS

Based upon the above findings, I conclude the following:

1. The Village of Elbridge's Zoning Code, Chapter 137, unreasonably restricts farm operations within Onondaga County Agricultural District No. 3 insofar as it prohibits agricultural uses within a county adopted, State certified, agricultural district. The Planning Board of the Village of Elbridge's requirement that the DeMarco farm operation undergo SEQR review is unreasonably restrictive of the

farm operation in light of 6 NYCRR Section 617.5, which provides that "agricultural farm management practices, including construction, maintenance and repair of farm buildings and structures, and land use changes consistent with generally accepted principles of farming" are Type II actions which are not subject to SEQR review.

2. The Village of Elbridge's administration of its zoning code, requiring a building permit to construct temporary greenhouses, and the Planning Board's requirement that a wooden fence be constructed to screen an existing farm operation from adjoining property owners, unreasonably restricts the DeMarco farm operation within a county adopted, State certified agricultural district. The Village of Elbridge and the Village of Elbridge Planning Board have not shown that the construction and operation of the greenhouses or the lack of wooden fencing to screen existing greenhouses threaten the public health or safety.

**DETERMINATION AND ORDER**

Now, therefore, in consideration of the above-stated findings and conclusions, it is hereby determined that the Village of Elbridge and the Village of Elbridge Planning Board have violated §305-a, subd. 1 of the AML, and it is hereby

ORDERED, pursuant to the provisions of §36 of the AML, that the Village of Elbridge comply with the provisions of AML §305-a, subd. 1 by (1) allowing agricultural operations within the Village on land located within a county adopted, State certified, agricultural district; and (2) allowing the DeMarco farm operation to construct temporary greenhouses on land within the agricultural district without a building permit; and that the Village of Elbridge Planning Board comply with the provisions of AML §305-a, subd. 1 by (1) rescinding the requirement that the DeMarco farm operation undergo SEQR review for the construction of farm buildings (the temporary greenhouses) on land within the agricultural district; (2) allowing the DeMarco farm operation to construct temporary greenhouses on land within the agricultural district without a building permit; and (3) rescinding the requirement that the DeMarco farm operation construct a wooden fence to screen the farm operation from the view of adjoining landowners on land within the agricultural district at 101 West Main Street.

This Order shall take effect immediately upon service on the Village of Elbridge, by mail to Mayor Timothy Ganey, Village of Elbridge, 210 West Main Street, P.O. Box 267, Elbridge, New York, 13080 and on the Planning Board of the Village of Elbridge by mail to Chairman John G. Horner, c/o Village of Elbridge, 210 West Main Street, P.O. Box 267, Elbridge, New York, 13080.

NATHAN L. RUDGERS
Commissioner of
Agriculture and Markets

Dated and Sealed this 28th
day of February, 2000 at
Colonie, New York