

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

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

**The Town of Throop and the Town of  
Throop Planning Board  
7471 Robinson Road  
Auburn, New York 13021**

**DETERMINATION  
AND  
ORDER**

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**PRELIMINARY STATEMENT**

In July 2002, the Department of Agriculture and Markets ("Department") received a request from Michael Butler, Butler Poultry Services, Inc., to review the Town of Throop's administration of its Zoning Code with respect to Mr. Butler's construction of a proposed poultry facility for the raising of pullets (generally, poultry up to 18 weeks of age) on land within Cayuga County Agricultural District Number 5 and the Town's adoption of a six-month moratorium on "commercial and industrial development" within the Town. The Department investigated to determine whether the Town of Throop and the Town of Throop Planning Board had administered the Town's Zoning Code in a manner consistent with the provisions of Agriculture and Markets Law (AML) §305-a, subd.1. The Department also examined the Town's rezoning of a portion of the "commercial and industrial" zoning district to "residential." AML §305-a, subd. 1.a. mandates that when exercising their powers to enact and administer comprehensive plans and local laws, ordinances, rules or regulations, local governments must do so in a manner as may realize the policy and goals of Agriculture and Markets Law Article 25-AA. The statute further provides that local governments "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."

The Department reviewed the Planning Board's decision and transcript of the Board's public hearing, minutes of Town Board Meetings during which the proposed poultry facility was discussed, relevant portions of the Zoning Code, and correspondence from the Town's Special Counsel. The Department also interviewed the farm owner, discussed the proposed facility with a veterinarian employed by the Department's Division of Animal Industry, conducted a site visit, met with Town officials to discuss the issue and had discussions with the Town's Special Counsel. Based upon the relevant facts and information gathered, I hereby make the following findings and conclusions which support a Determination that the Town of Throop and the Town of Throop Planning Board have violated AML §305-a, subd.1 and an Order compelling compliance with such law.

**FINDINGS**

1. In July 2002, the Department of Agriculture and Markets received a request from Michael Butler, Butler Poultry Services, Inc., to review the Town of Throop's Zoning Code and its administration for compliance with AML §305-a, subd.1. Mr. Butler indicated that he submitted a site plan and an application to the Town of Throop for a building permit to construct a new poultry facility on a five-acre parcel located within both the Town's "commercial and Industrial" zoning district and Cayuga County Agricultural District No. 5. Mr. Butler indicated that after he applied for the building permit, the Town adopted a six-month moratorium on commercial and industrial development within the Town. Mr. Butler explained that he has an existing business, which services approximately 1.8 million pullets for farms in New York and New England, and that he contracts with other farmers to raise approximately 700,000 pullets.
2. On July 12, 2002, Kim Blot, the Director of the Division of Agricultural Protection and Development Services, informed Town Supervisor Leo Herrling by letter of Mr. Butler's request to conduct a review of the Town of Throop's Zoning Code and its administration for compliance with §305-a, subd.1.
3. On July 24, 2002, Andrew Leja, Esq., Special Counsel to the Town of Throop telephoned Robert Somers, Chief of the Department's Agricultural Protection Unit, and informed him that the Town Board was meeting that night to discuss a proposed moratorium on commercial and industrial development in the Town. Dr. Somers informed Mr. Leja, generally, of the Department's position on SEQRA review and site plan/special use permit requirements, as well as of the impact of the proposed moratorium. Dr. Somers explained, generally, the Department's position that farm operations should be allowed as a permitted use in all zoning districts as long as the land is within an agricultural district. Dr. Somers followed up that discussion by faxing to Mr. Leja information, as requested, including copies of three letters that had been sent to other municipalities concerning SEQRA review and site plan/special use permit requirements.
4. On July 24, 2002, the Town Board adopted a six-month moratorium on commercial and industrial development in the Town (Local Law No. 1 of 2002).
5. On August 6, 2002, the Planning Board denied Mr. Butler's application for site plan approval.
6. On September 11, 2002, Mr. Blot informed Supervisor Herrling of the Department's conclusion that the moratorium appeared to unreasonably restrict farm operations within an agricultural district and that application of SEQRA and site plan requirements to Mr. Butler's proposed facility appeared to unreasonably restrict his farm operation in possible violation of AML §305-a, subd. 1.
7. Following the Department's grant of three extensions of time for the Town's reply, Mr. Leja responded on behalf of the Town by letter, dated December 3, 2002, and challenged the Department's authority to act in this matter. Mr. Leja contended that the Town's assertion of its zoning authority over Mr. Butler's project is in full compliance with its police power authority under the State Constitution, its local law authority under the Municipal Home Rule Law and its duties to preserve the public health and safety and exercise reasonable land use control as recognized within the AML. He did not, however, provide any

evidence or information of any alleged threat to the public health or safety from the proposed poultry facility.

8. John Rusnica, Associate Attorney with the Department's Counsel's Office, replied to Mr. Leja and Department staff met with Town officials and the Town's attorneys on January 22, 2003. At that time, the Town's site plan review requirements and its administration of them, the treatment of the proposed Butler poultry facility as a special use, the Town's moratorium on commercial/industrial development (Local Law No. 1 of 2002), and a possible three-month extension of the local law were discussed. The Department acknowledged at the meeting that the Town's site plan process is not, on its face, unreasonably restrictive with respect to the proposed facility in this case, although the process could be unreasonably restrictive under some circumstances. The Department reiterated that the act of farming and the construction of agricultural buildings should be an allowed activity within an agricultural district and not subject to a special permit or special conditions.
9. On March 3, 2003, Mr. Blot wrote to Supervisor Herrling concerning the Town's proposed local law to expand the residential zoning district within a portion of Cayuga County Agricultural District Number 5, including the subject property owned by Mr. Butler. Mr. Blot explained that the proposed zoning amendment appears, on its face, to unreasonably restrict farm operations, including the Butler farm operation, within Cayuga County Agricultural District Number 5, to the extent that it would prohibit, render nonconforming, or subject to a special use permit, agricultural uses of land. Mr. Blot reiterated the Department's position that the proposed Butler poultry facility is a legitimate farm use appropriately located in a county adopted, State certified agricultural district and that, regardless of the zoning of land located in an agricultural district, agricultural uses must be allowed. Mr. Blot also noted that if the Town enacted the proposed zoning amendment as then written and administered it with respect to farm operations within an agricultural district, the Town might be in violation of AML §305-a.
10. On May 5, 2003, Mr. Butler provided the Department with a copy of Local Law No. 2 of 2003, which amended the Town Zoning Code to, among other things, rezone Mr. Butler's property as "residential." The Town Board adopted the local law on April 23, 2003.
11. The Department conducted an extensive review of the written documentation related to Mr. Butler's site plan application and the Planning Board's denial of the application. By letter dated May 14, 2003, Mr. Blot informed Supervisor Herrling that the Department did not view as unreasonably restrictive a requirement that Mr. Butler provide the Town with a blueprint of the proposed building, including the design for the exhaust/ventilation system; details on how drainage will be addressed and how the site will be graded; a letter from the County Department of Health indicating that the use of a holding tank on the property for the collection of septage is acceptable; an estimate of the amount of public water expected to be used to operate the facility; a description of how dead birds/chicks will be disposed of; and written confirmation that a sign will not be installed on the premises. Mr. Blot expressed the Department's conclusion that the Town Planning Board's denial of Mr. Butler's site plan application on grounds other than those indicated, however, unreasonably restricts the Butler farm operation within an agricultural district in possible violation of AML §305-a, subd. 1. Mr. Blot also noted that if Local Law No. 2 of 2003 is administered by the Town to deny Mr. Butler the opportunity to apply for a building permit, his farm operation appears to be unreasonably restricted in possible violation of AML §305-a. Mr. Blot reiterated that if the Town or the Planning Board believes that the public

health or safety is threatened by the proposed facility, it should provide the Department with any documentation and other evidence it may have to that effect.

12. On June 6, 2003, Mr. Leja replied to Mr. Blot's May 14<sup>th</sup> letter and requested that the Department reconsider its position on local regulation of the initial siting of agricultural uses, arguing that new agricultural uses should be treated differently than pre-existing uses which desire to expand or change. Mr. Leja did not provide any information, documentation or other evidence that the proposed poultry facility presents a threat to the public health or safety. He did, however, argue that the Town has been unable to fully and adequately evaluate potential health and safety impacts from the project since it lacks substantive information from Mr. Butler on certain key health issues. With respect to the Town's rezoning of Mr. Butler's land, Mr. Leja indicated that Mr. Butler lacks the necessary approvals for his project and that the Town is precluded from issuing any permits in the absence of those approvals. Mr. Leja forwarded a copy of Justice Fandrich's May 28, 2003 Decision to remand the Butler site plan matter to the Planning Board to allow Mr. Butler to fully comply with all site plan application requirements and to address the Planning Board's concerns that had not been addressed as of that date.
13. On July 10, 2003, Mr. Butler sent the Department copies of Justice Fandrich's July 1, 2003 Order, implementing the May 28, 2003 Decision, and Ross Tisci's (an attorney representing Mr. Butler) July 2, 2003 letter to Mr. Leja concerning the scheduling of Mr. Butler's matter for hearing before the Planning Board. Justice Fandrich rescinded the August 6, 2002 decision of the Planning Board and ordered that the supplemental proceedings and decision of the Planning Board take place not later than July 27, 2003. Mr. Tisci's letter indicates his understanding that the Planning Board hearing would be scheduled for July 15, 2003 and that he had informed Mr. Leja of his intention to produce documentary evidence specifically addressing the site plan application items described in the Order.
14. On July 30, 2003, Mr. Rusnica replied to Mr. Leja that the zoning power delegated to municipalities is limited by AML §305-a and noted that whether new, existing or expanding, agricultural uses and farm operations (including the construction of on-farm buildings) should be allowed uses within an agricultural district.
15. By letter, dated July 31, 2003, Mr. Tisci informed the Department that the Planning Board had not advertised nor scheduled a meeting, nor rendered any decision, and provided the Department with a copy of Mr. Leja's Notice of Appeal of Justice Fandrich's Order.
16. On August 15, 2003, Mr. Blot sent a letter to Supervisor Herrling setting forth the Department's conclusion that the Town Planning Board's August 6, 2002 denial of Mr. Butler's site plan application and the Planning Board's subsequent failure to accept and consider additional information from Mr. Butler relative to his site plan application, and to render a decision, unreasonably restricts the Butler farm operation within an agricultural district in violation of AML §305-a, subd. 1. Mr. Blot also explained the Department's conclusion that the application of the Town's Residential Zoning District requirements to Mr. Butler's farm operation within Cayuga County Agricultural District Number 5, to the extent that such application would prohibit, render nonconforming, or subject to a special use permit, agricultural uses of land, would also unreasonably restrict the farm operation in violation of AML §305-a, subd. 1. Mr. Blot's conclusion that the Town and the Planning Board have not demonstrated that the public health or safety is threatened by the proposed poultry facility was also included.

17. By Mr. Blot's August 15<sup>th</sup> letter, the Department requested that the Planning Board comply with AML §305-a, subd. 1 by accepting and considering additional information from Mr. Butler relative to his site plan application, and rendering a decision on the matter within 15 days of receipt of his letter. Mr. Blot further stated that to comply with AML §305-a, subd. 1, the Town and the Planning Board must not impose any requirements pertaining to its Residential Zoning District on the Butler farm operation to the extent such requirements would prohibit, render nonconforming, or subject to a special use permit, Mr. Butler's agricultural uses of land, including the establishment and operation of a poultry facility within Cayuga County Agricultural District Number 5. Mr. Blot requested the Town and the Planning Board confirm to the Department within 15 days that they would not impose such requirements.
18. The Town of Throop has not responded to Mr. Blot's August 15, 2003 letter.

### **CONCLUSION**

Based upon the above findings, I conclude the following:

1. The application of the Town's Residential Zoning District requirements to Mr. Butler's farm operation, to the extent that such application would prohibit, render nonconforming, or subject to a special use permit, agricultural uses of land, including the establishment, construction and operation of a poultry facility, unreasonably restricts the Butler farm operation in Cayuga County Agricultural District #5.
2. The Town Planning Board's August 6, 2002 denial of Mr. Butler's site plan application and the Planning Board's subsequent failure to accept and consider additional information from Mr. Butler relative to his site plan application, and to render a decision on such matter, unreasonably restricts the Butler farm operation within Cayuga County Agricultural District #5.
3. While expressing health and safety concerns, generally, the Town has not shown that the proposed Butler poultry facility presents a threat to 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 Town of Throop and the Town of Throop Planning Board have violated AML §305-a, subd. 1, and it is hereby

ORDERED, pursuant to the provisions of AML §36 that the Town of Throop and the Town of Throop Planning Board comply with the provisions of AML §305-a, subd. 1 by not administering any provisions of its Zoning Code, or other local laws, with respect to the Butler farm operation to the extent such requirements would prohibit, render nonconforming, or subject to a special use permit, Mr. Butler's agricultural uses of land, including the establishment and operation of a poultry facility within Cayuga County Agricultural District #5.

IT IS FURTHER ORDERED that the Town of Throop Planning Board comply with the provisions of AML §305-a, subd. 1 by accepting and considering additional information from Mr. Butler relative to his site plan application to supplement information previously provided to the Planning Board, and rendering a decision on whether Mr. Butler's site plan should be approved.

This Order shall take effect immediately upon service of a certified copy thereof on the Town of Throop and the Town of Throop Planning Board, by mail to Leo Herrling, Supervisor, Town of Throop and William Ponzi, Chair of the Town of Throop Planning Board, at 7471 Robinson Road, Auburn, New York, 13021.



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Nathan L. Rudgers  
Commissioner of  
Agriculture and Markets

Dated and Sealed this  
day of October, 2003  
at Colonie, New York

